

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Par Hawaii Refining, LLC's
Kapolei, Hawaii Refinery**

**Contains Information Claimed by
Par Hawaii Refining, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Par Hawaii Refining, LLC (“PHR”) dated December 29, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for PHR’s Kapolei, Hawaii refinery (the “Kapolei Refinery”) in 2017. For the reasons described herein, EPA is granting PHR’s request for an extension of the Kapolei Refinery’s RFS small refinery exemption for 2017.

EPA notes that PHR’s Kapolei Refinery did not receive the initial, statutory small refinery exemption. CAA 211(o)(9)(A)(i); 40 CFR 80.1441(a)(1). Nonetheless, EPA believes the refinery is eligible to petition for hardship relief today. A refinery may petition for such hardship relief “at any time,” CAA 211(o)(9)(B)(i); 40 CFR 80.1441(e)(2), so long as the refinery is a qualifying small refinery. To “qualify for an extension of its small refinery exemption,” a refinery’s average aggregate daily crude oil throughput must not exceed 75,000 barrels per day “for the most recent full calendar year prior to seeking an extension as well as for the year for which an exemption is sought.” 40 CFR 80.1441(e)(2)(iii). EPA finds that the Kapolei Refinery qualifies to petition for hardship relief because its crude oil throughput did not exceed 75,000 barrels per day in either 2017 (the year for which it seeks an extension) as well as for 2016 (the prior year).¹

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either*

¹ Previously, EPA regarded as eligible for hardship relief only those refineries that received the initial statutory exemption. Such refineries qualified as small refineries in either 2004 or 2006. See 40 CFR 80.1441(a)(1), 80.1141(a)(1); see also 75 FR 14866 (defining “small refinery” based on crude throughput in 2006). EPA’s current interpretation and regulations, however, focus on crude throughput during the desired exemption period and the year immediately preceding the petition. See 40 CFR 80.1441(e)(2)(iii). This approach properly allows a small refinery, which satisfies the size threshold requirement in the time periods most relevant to the exemption, to seek hardship relief without regard to the refinery’s operations from over a decade ago. See 79 FR at 42152.

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disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”² Congress then directed EPA to follow DOE’s recommendation.³ (b)(4) applied by DOE Kapolei Refinery’s (b)(4) applied by DOE (b)(4) applied by DOE

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For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the Kapolei Refinery (b)(4) applied by DOE (b)(4) applied by DOE EPA’s review of DOE’s analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4) applied by DOE.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the Kapolei Refinery (b)(4) applied by DOE (b)(4) applied by DOE (b)(4) applied by DOE the Kapolei Refinery (b)(4) applied by DOE

Table 1⁵
DOE Evaluation of PHR’s Petition

² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

³ Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

⁴ From DOE recommendation for the Kapolei Refinery transmitted to EPA on March 28, 2018.

⁵ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE’s explanation regarding why it does not assign scores for the gray-shaded categories.

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1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b) (4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b) (4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b) (4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg} < 40\%$ 10 = $D/(G+D) > 40\%$	(b) (4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b) (4)
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁶	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		(b) (4)
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁷	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event,	(b) (4)

⁶ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Kapolei Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁷ DOE has not scored this category for any hardship petition evaluations.

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	10 = special event impacting viability	
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down
	Subtotal (average)	(b)(4) nt
	Ranking (subtotal x 0.50)	(b)(4) nt

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

PHR submitted a petition to EPA on December 29, 2017, for an extension of the RFS small refinery exemption for the Kapolei Refinery for 2017. In support of its petition, PHR submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that PHR believes demonstrate DEH. The petition stated that PHR

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Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, PHR's petition presents financial information that documents (b)(4),¹¹ (b)(4). Based on our review of all of the available information about the Kapolei Refinery, and our consultation with DOE, EPA has concluded that the Kapolei Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting PHR's request for a temporary extension of the Kapolei Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE the Kapolei Refinery (b)(4) applied by DOE

(b)(4) EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹²

⁸ PHR petition at 3.

⁹ PHR petition at 2.

¹⁰ PHR petition at 10.

¹¹ PHR petition at 2.

¹² *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

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This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Wynnewood Refining Company, LLC's
Wynnewood, Oklahoma Refinery**

**Contains Information Claimed by
Wynnewood Refining Company, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Wynnewood Refining Company, LLC (“WRC”) dated January 23, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for WRC’s Wynnewood, Oklahoma refinery (the “Wynnewood Refinery”) in 2017. For the reasons described herein, EPA is granting WRC’s request for an extension of the Wynnewood Refinery’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) app ed by DOE the Wynnewood Refinery’s (b)(4) app

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For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the Wynnewood Refinery (b)(4) applied by DOE. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the Wynnewood Refinery (b)(4) applied by DOE. (b)(4) applied by DOE the Wynnewood Refinery (b)(4) applied by DOE

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DOE Evaluation of WRC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	(b)(4)

³ From DOE recommendation for the Wynnewood Refinery transmitted to EPA on January 23, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
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EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

WRC submitted a petition to EPA on January 23, 2018, for an extension of the RFS small refinery exemption for the Wynnewood Refinery for 2017. In support of its petition, WRC

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Wynnewood Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

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submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that WRC believes demonstrate DEH. The petition stated that the Wynnewood Refinery [REDACTED] (b) (4)

⁷ Similarly, WRC [REDACTED] (b) (4)

⁸ Additionally, WRC [REDACTED] (b) (4)

⁹

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, WRC's petition presents financial information that documents [REDACTED] (b) (4) along with other metrics of [REDACTED] (b) (4). Based on our review of all of the available information about the Wynnewood Refinery, and our consultation with DOE, EPA has concluded that the Wynnewood Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting WRC's request for a temporary extension of the Wynnewood Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with [REDACTED] (b) (4) applied by DOE the Wynnewood Refinery [REDACTED] (b) (4) applied by DOE

[REDACTED] (b) (4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹⁰

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ WRC Petition at 2.

⁸ WRC Petition at 2.

⁹ WRC Petition at 2.

¹⁰ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Wyoming Refining Company's
Newcastle, Wyoming Refinery**

**Contains Information Claimed by
Wyoming Refining Company
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Hermes Consolidated, LLC, doing business as Wyoming Refining Company (hereinafter “WRC”) dated December 29, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for WRC’s Newcastle, Wyoming refinery (the “Newcastle Refinery”) in 2017. For the reasons described herein, EPA is granting WRC’s request for an extension of the Newcastle Refinery’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

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For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the Newcastle Refinery (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

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b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
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d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)

³ From DOE recommendation for the Newcastle Refinery transmitted to EPA on December 29, 2017.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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e	Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b) (4)
2 Disproportionate Economic Impact Metrics			
a	Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b	Renewable fuel blending (% of production)		(b) (4)
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	(b) (4)
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	(b) (4)
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d	RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	(b) (4)
Subtotal (average)			(b) (4)
Ranking (subtotal x 0.50)			(b) (4)
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)			(b) (4)
Ranking (subtotal x 0.50)			(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Newcastle Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively, the gross margins for 2014 and 2015 were taken from WRC's 2015 RFS hardship petition update, dated September 15, 2016, as WRC was purchased by Par Pacific Holdings, Inc. in July of 2016 and could not include this information in its petition.

⁶ DOE has not scored this category for any hardship petition evaluations.

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economic factors” may cause a small refinery to experience DEH if required to comply with its RFS obligations.

WRC submitted a petition to EPA on December 29, 2017, for an extension of the RFS small refinery exemption for the Newcastle Refinery for 2017. In support of its petition, WRC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that WRC believes demonstrate DEH. The petition stated that the Newcastle Refinery’s (b) (4)

(b) (4) ⁸ The petition also stated that the Newcastle Refinery (b) (4)

⁹ (b) (4) Newcastle Refinery (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery’s exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, WRC’s petition presents financial information that documents (b) (4) along with other metrics of (b) (4). Based on our review of all of the available information about the Newcastle Refinery, and our consultation with DOE, EPA has concluded that the Newcastle Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting WRC’s request for a temporary extension of the Newcastle Refinery’s small refinery RFS hardship exemption for 2017.

EPA’s decision is consistent with (b) (4) applied by DOE the Newcastle Refinery (b) (4) applied by DOE

EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and “other economic factors” and it is consistent with the case law recognizing EPA’s independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ WRC petition at 8.

⁸ See *supra* note 5.

⁹ WRC petition at 3.

¹⁰ WRC petition at 12.

¹¹ *Sinclair*, 874 F.3d at 1166; See also *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000017

MAR 29 2018

OFFICE OF
AIR AND RADIATION

Mr. Joseph Israel
Chief Executive Officer
Par Petroleum, LLC
740 W. Main Street
Newcastle, Wyoming 82701

Dear Mr. Israel:

I am writing in response to the petition from Par Hawaii Refining, LLC ("PHR") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for PHR's refinery in Kapolei, Hawaii (the "Kapolei Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Kapolei Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, PHR submitted a petition to EPA dated December 29, 2017 to extend the exemption for the Kapolei Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of PHR's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the Kapolei Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and PHR is not subject to the requirements of an obligated party for fuel produced at the Kapolei Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
 2565 PLYMOUTH ROAD
 ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF
 AIR AND RADIATION

MAY 04 2017

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption from the requirements of the Renewable Fuel Standard (RFS) program for the (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to the EPA dated January 31, 2017, to extend the exemption for the (b) (4) from January 1, 2016, through December 31, 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that (b) (4) will experience "disproportionate economic hardship" at the (b) (4) by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting (b) (4) petition requesting a further extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the (b) (4) gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
 Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program For**
(b) (4)

Contains Information Claimed by
(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated January 31, 2017, for a one-year extension of the RFS small refinery exemption for its (b) (4) for its 2016 RFS obligations. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4) RFS small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA’s regulations implementing the EISA amendments (“RFS2”), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR

80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose “disproportionate economic hardship” on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that “disproportionate economic hardship” exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a “disproportionate economic hardship,” provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience “disproportionate economic hardship” from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and summarizes DOE’s revised approach to evaluating when “disproportionate economic hardship” may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² “Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

³ Excerpt from pp. 1–3 of the DOE Small Refinery Study. A complete explanation of DOE’s hardship evaluation process and its conclusions is available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

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found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPAAct 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.
- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national

⁴ The Senate Report (Senate Report 111-45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).⁵

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries' blendstock, resulting in no net cost of compliance for the refinery. See Dallas Burkholder, "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-0111-0062.

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significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impacts index between 0 and 10. The disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

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for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country's economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries,

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm's competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

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which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program.

EPA considers DOE’s assessment of whether a small refinery will face disproportionate impacts in complying with its RFS obligations. The DOE analysis informs EPA’s finding of whether “disproportionate economic hardship” exists and in turn EPA’s resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.¹⁰ In addition to the metrics DOE applies in assessing disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA’s evaluation regarding how “other economic factors” may cause a small refinery to experience “disproportionate economic hardship” if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

(b) submitted a petition to EPA dated January 31, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2016.¹¹ In support of its petition, (b) submitted a completed DOE survey form PI-588, which specified the factors that (b) believes demonstrate disproportionate economic hardship. (b) also provided a petition document with additional explanation regarding the hardship the Refinery would face in complying with the RFS program, audited financial statements for 2013–2016, unaudited cash flow statements for fiscal years 2013–2016 and for the first quarter of fiscal year 2017, and unaudited calendar year income statements and balance sheets for 2013–2016. (b) also provided EPA with anticipated compliance costs for RFS. (b) (4) petition became complete on or about February 8, 2016. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that (b) has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding the Refinery’s operations, RFS compliance costs, and financial condition. (b) provided most of this information to EPA in its petition and in other supporting documents (e.g., Refinery financial information, RFS compliance cost estimates). EPA obtained the remaining

¹⁰ EPA also considers DOE’s analysis of a small refinery’s viability, which DOE assesses as the second component of “disproportionate economic hardship.” DOE Small Refinery Study at 3 (“Disproportionate economic hardship must encompass two broad components...and an effect sufficient to cause a significant impairment of the refinery operations.”); DOE Small Refinery Study at 27, 36 (“Refiner viability refers to the ability of the refiners to remain competitive and profitable.”). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on “viability,” but we are changing our approach. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship, compliance with RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery’s operations are not significantly impaired.

¹¹ (b) (4)

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information from public sources and from DOE (e.g., average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of (b) (4) Operations

(b) (4) is a privately held energy company that (b) (4) ¹² The (b) (4) qualified as a small refinery under the RFS1 and RFS2 regulations, and was exempt from the RFS standards from 2006 through 2010. The Refinery's maximum crude capacity is (b) (4) ¹³ The Refinery refines (b) (4)

A list of primary processing units and approximate production rates is shown below in Table 1.

Table 1
(b) (4) Process Information ¹⁴

Processing Unit	Capacity
Crude distillation unit	(b)(4)
Catalytic reformer unit	(b)(4)
Naphtha reformer	(b)(4)
Lubricants capacity	(b)(4)
Asphalt & road oil capacity	(b)(4)
Volume of primary liquid fuels products in 2016 ¹⁵	(b) (4)
Geographic locations in which fuel will be sold	(b)(4)

(b) (4) distributes fuels produced at the Refinery into local markets (b) (4)

(b) (4)

is also (b) (4)

The Refinery

¹⁶ The Refinery

Furthermore, (b) (4) states that

there is (b) (4)

¹⁷ (b) (4) was able to (b) (4)

¹⁸

¹² (b) (4) website, at (b) (4)

¹³ (b) (4) Petition at 1.

¹⁴ Data obtained from DOE's Annual Refinery Capacity Report published June 19, 2016, which contains data as of January 1, 2016.

¹⁵ (b) (4) compliance cost calculations spreadsheet from February 27, 2017 email from (b) (4)

¹⁶ (b) (4) Petition at 2.

¹⁷ (b) (4) Petition at 2 and 3.

¹⁸ (b) (4) compliance cost calculations spreadsheet from February 27, 2017 email from (b) (4)

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B. Summary of (b) (4) RFS Compliance Costs

(b) (4) provided EPA with the information in Table 2 regarding the (b) (4) RFS compliance costs in 2016, showing a total RFS compliance cost of (b) (4) for 2016.

Table 2¹⁹
(b) (4) RFS Compliance Costs in 2016

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	Renewable Volume Blended by (b) (4) 2016	2016 Cost of Renewable Blended by (b) (4)	Total Cost/ of Blended Renewable	Total RINs Separated by (b) (4)	RIN Shortfall/ (Surplus)	Cost of Purchased /Carried Over RINs ²⁰	Total Cost of Purchased/ Sold RINs	Total RFS Cost
	%	Gallons	Gallons	\$/Gallon	\$	EtOH Equ.	EtOH Equ.	\$/RIN	\$	\$
Cellulosic Biofuel	0.128	(b) (4)								
Biomass-based Diesel	1.59	(b) (4)								
Advanced Biofuel	2.01	(b) (4)								
Renewable Fuel	10.1	(b) (4)								
Total Cost					(b) (4)					

C. (b) (4) Financial Condition

Table 3 summarizes data from (b) (4) balance sheet showing (b) (4) cash, short-term debt, and long-term debt for 2013-2016.

¹⁹ (b) (4) compliance cost calculations spreadsheet from February 27, 2017 email from (b) (4)

²⁰ EPA is using (b) (4) estimates of purchased RIN costs, although it notes that (b) (4) estimated costs for purchased RINs are higher than the RIN prices in early 2017 in advance of the 2016 compliance deadline. The (b) (4) Financial Statement for the year ended September 30, 2016, states at page 10 that (b) (4)

EPA notes that 2016 D6 RINs were trading at \$0.44/RIN on February 2, 2017, using public data from Progressive Fuels Limited, <http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com>.

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Table 3
(b) Balance Sheet Data²¹

	2013	2014	2015	2016
Cash	(b) (4)			
Short-term debt (current liabilities)	(b) (4)			
Long-term debt (notes payable)	(b) (4)			
Total Stockholders' Equity	(b) (4)			

(b) (4)

23

(b) (4)

24

Table 4 summarizes data from (b) (4) income statements for calendar years 2013 through 2016.²⁵ (b) (4) three-year average gross refining margin for 2014-2016 was (b) (4) the three-year industry average of \$11.40/bbl.²⁶ (b) (4) three-year average net refining margin for 2014-2016 was (b) (4) the three-year industry average of \$6.52/bbl.

²¹ (b) Supplemental Information, Calendar Year Balance Sheet.

²² (b) (4) audited Financial Statements for the years ended September 30, 2016 and 2015, page 13.

²³ (b) (4) audited Financial Statements for the years ended September 30, 2016 and 2015, page 14.

²⁴ (b) Supplemental Information, Calendar Year Balance Sheets.

²⁵ Gross refining margin is a measure of a refinery's profitability. It is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is typically calculated by also subtracting operating expenses such as purchased fuel, electricity, labor, and routine maintenance expenses, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation, and finance charges.

²⁶ EPA calculated the three-year average industry gross and net refining margins for 2014-2016 based on public information.

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Table 4
(b) Refining Margins²⁷
(A)

	2013	2014	2015	3-year average 2013 – 2015	2016	3-year average 2014 – 2016
(b) Gross refining (A) margin, \$ per bbl	(b) (4)					
Industry Gross refining margin, \$ per bbl				12.32		11.40
(b) Net refining (A) margin, \$ per bbl	(b) (A)					
Industry Net refining margin, \$ per bbl				7.35		6.52

Table 5 contains data taken from (b) (4) income statement, which shows that (b) (A) had a net income of (b) (4) in 2016.

Table 5
(b) Income Statements \$²⁸
(A)

	2013	2014	2015	2016
Net Sales	(b) (4)			
Cost of Sales	(b) (4)			
Gross Profit	(b) (4)			
Total Income	(b) (4)			
Total Expenses Before Depreciation	(b) (4)			
Depreciation and Amortization	(b) (4)			
Operating Net Income	(b) (4)			
Net Income (Loss)	(b) (4)			

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for (b) (A) if EPA determines that the Refinery would experience “disproportionate economic hardship” in complying with the RFS program.

²⁷ EPA used the calendar year refining margins in its evaluation as provided by (b) (A) in its Supplemental Information, Calendar Year Income Statements.

²⁸ (b) Supplemental Information, Calendar Year Income Statements.
(A)

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This section provides the analysis and rationale for our grant of (b) (4) petition to extend its small refinery exemption for 2016.

A. DOE's Evaluation of (b) (4) for 2016

EPA asked DOE to evaluate whether the (b) (4) will experience “disproportionate economic hardship” in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Table 6 summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

Table 6²⁹
DOE Evaluation of (b) (4) Petition for the (b) (4) for 2016

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating) 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	1
b Other business lines besides refining and marketing	0 = Other Lines 10 = No Other Lines	10
c Local market acceptance of Renewables	0 = Products accepted 10 = Product not accepted	1
i E10	0 = High acceptance 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	10
e Subject to exceptional state regulations	0 = not subject 5 = Some barriers for compliance 10 = subject to exceptional state regulations	5
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ³⁰	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	1
b Renewable fuel blending (% of production)		10
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production	

²⁹ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

³⁰ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015, based on public data (complete year industry data for 2016 was not publically available when DOE performed their evaluation). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) three-year average gross and net margins for 2013-2015 were (b) (4), respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for (b) (4).

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iii	Other Advanced Biofuel blending (not used)	1 = <1.1% 0 = some blending 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	■
d	RINs net revenue or cost ³¹	0 = revenue > cost 10 = revenue < cost	
	Subtotal (average)		■
	Ranking (subtotal x 0.50)		■
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency 5 = moderate impact 10 = impact on efficiency	■ b
b	Individual special events	0 = no special event 5 = moderate event 10 = special event impacting viability	■
c	Compliance costs likely to lead to shut down	0 = not likely to shut down 10 = likely to shut down	■ b
	Subtotal (average)		■
	Ranking (subtotal x 0.50)		■

(4)

The first ranking in Table 6 (disproportionate impacts) is a combination of the disproportionate structural index and disproportionate economic impact index, and the second ranking in Table 6 is the viability index. (b)(4) applied by DOE

(b)(4) (b)(4) applied by DOE

(see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if either of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."³²(b)(4) (b)(4) (b)(4) applied by DOE

(b)(4) (b)(4) applied by DOE

B. EPA's Evaluation of (b)(4) Hardship Petition for 2016

EPA has evaluated the information described in Section III., as well as DOE's analysis of it, to determine whether the Refinery will experience "disproportionate economic hardship" from

³¹ DOE has not scored this category for any hardship petition evaluations. See further discussion on this issue below.

³² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that the (b) (4) will experience “disproportionate economic hardship” and that exemption from its RFS obligations is warranted for 2016.

In determining whether the (b) (4) will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts the Refinery. EPA generally defers to DOE’s assessment due to DOE’s expertise on the refining industry. In its analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. (b)(4) applied by DOE (b) (4) These disproportionate impacts disadvantage the Refinery relative to the industry average and make compliance with RFS obligations relatively more burdensome. EPA finds that this disproportionate difficulty of compliance indicates that compliance with its RFS obligations would cause the (b) (4) disproportionate economic hardship.

For a disproportionately-impacted refinery like the (b) (4) its disproportionate economic hardship may be exacerbated by a difficult year for the industry as a whole. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend, coupled with its disproportionate economic and structural impacts, can result in tangible effects on the small refinery, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire RINs for compliance, and the potential to impair refinery operations. In addition, structurally impacted refineries often lack access to capital or credit that can also be necessary to achieve compliance.

The (b) (4) financial performance further shows that it would suffer disproportionate economic hardship from compliance with RFS obligations. The Refinery’s net income has (b) (4). Furthermore, The Refinery’s average net refining margins over both the 2014-2016 and the 2013-2015 time periods have been (b) (4) (See Table 4).

For the reasons discussed above, EPA finds that the (b) (4) would suffer a disproportionate economic hardship if it had to comply with its RFS obligations for 2016 and should be granted full relief.³³

³³ EPA acknowledges that (b)(4) applied (b) (4) (b)(4) applied by DOE

While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship (see footnote 10), EPA may choose to grant full relief based on its own independent review of the small refinery’s information.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with its RFS requirements. Based on our analysis of all of the available information about (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements. Therefore, EPA is hereby granting (b) (4) request for a temporary extension of its small refinery RFS hardship exemption for 2016.

This decision is a final agency action for purposes of CAA section 307(b)(1). Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000035

MAY 23 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)(b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for (b) (4)'s refinery in (b) (4)(b) (4)(b) (4) the (b) (4) (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4)(b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions (b) (4) submitted a petition to EPA dated July 11, 2017 to extend the exemption for the (b) (4)(b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4)'s gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4)(b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Contains Material Claimed as Confidential Business Information

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For**

**(b) (4)(b) (4)(b) (4)(b) (4)
(b) (4)(b) (4)(b) (4)(b) (4)**

**Contains Information Claimed by
(b) (4)(b) (4)(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from (b) (4)(b) (4)(b) (4) (“(b) (4)”) dated July, 11, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4)(b) (4)(b) (4) refinery (the (b) (4)(b) (4)”) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4)(b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b) (4) (b) (4)(b) (4) applied by DOE

(b) (4) (b) (4)(b) (4) (b) (4) applied by DOE (b) (4)

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b)(4)(b)(4) (b)(4) applied by DOE (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4) (b)(4) applied by DOE.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by (b)(4)(b)(4) (b)(4) applied by DOE (b)(4) applied by DOE

³ Therefore, (b)(4) applied by DOE (b)(4)(b)(4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of the (b)(4)(b)(4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	(b)(4)
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance	(b)(4)

³ From DOE recommendation for the (b)(4)(b)(4) transmitted to EPA on February 22, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on July 11, 2017, for an extension of the RFS small refinery exemption for the (b) (4)(b) (4) for 2017. In support of its petition, (b) (4) submitted

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.43/bbl and \$6.32/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

March 14, 2019

OFFICE OF
AIR AND RADIATION

Mr. Michael Norman
Vice President Environmental & Regulatory Affairs
Delek US Holdings, Inc.
7102 Commerce Way
Brentwood, TN 37027

Re: Alon USA Partners, LP, Big Spring, Texas, Refinery

Dear Mr. Norman:

I am writing in response to the petition from Alon USA Partners, LP ("APBS") for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for APBS's refinery in Big Spring, Texas (the "Big Spring Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, the Big Spring Refinery submitted a petition to EPA dated October 16, 2018 to extend the exemption for the Big Spring Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of the Big Spring Refinery's RFS small refinery exemption. This means that from January 1, 2017 through December 31, 2017, the Big Spring Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and APBS is not subject to the requirements of an obligated party for fuel produced at the Big Spring Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink that reads "Ben Hengst, for". The signature is written in a cursive, flowing style.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Alon USA Partners, LP's
Big Spring, Texas Refinery**

**Contains Information Claimed by
Alon USA Partners, LP
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Alon USA Partners, LP (“APBS”) dated October 16, 2018, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for Alon USA Partners, LP’s Big Spring, Texas (“ABSR”) refinery in 2017. For the reasons described herein, EPA is granting APBS’s request for an extension of ABSR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) ABSR’s (b)(4)

(b)(4) applied by DOE

(b)(4) ABSR (b)(4) applied by DOE ABSR’s (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by ABSR (b)(4) applied by DOE (b)(4). EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) ABSR (b)(4) applied by DOE (b)(4) applied by DOE (b)(4) applied by DOE³ Therefore (b)(4) applied by DOE ABSR, (b)(4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of ABSR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)

³ From DOE recommendation for ABSR transmitted to EPA on March 11, 2019.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a	Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative (b)
b	Renewable fuel blending (% of production)	
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25% (b)
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche (b)
d	RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost
Subtotal (average)		(b)
Ranking (subtotal x 0.50)		(b)
3 Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency (b)
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability (b)
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down (b)
Subtotal (average)		(b)
Ranking (subtotal x 0.50)		(b)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

APBS submitted a petition to EPA on October 16, 2018 for an extension of the RFS small refinery exemption for ABSR for 2017. In support of its petition, APBS submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that APBS believe demonstrate DEH. APBS stated that although ABSR (b)(4) APBS's parent corporate credit is rated only B2 by Moody's and

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). ABSR's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b)(4) and (b)(4) respectively. (Petition at Tab A, DOE Form PI-588, 3.6, 3.7.)

⁶ DOE has not scored this category for any hardship petition evaluations.

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BB- by Standard and Poors credit rating services, respectively, an indicator of limitations on ABSR's ability to borrow.⁷ ABSR has a (b)(4)

APBS stated that this production rate is also (b)(4) than ABSR's regional competitors.⁸ ABSR's average net refinery margin for the period 2014-2016 was (b)(4)⁹ (b)(4) than the national industry average of (b)(4). APBS further states that ABSR sells its products into the competitive Gulf Coast market, and must compete with larger Gulf Coast refineries which benefit from comparative economies of scale.¹⁰

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, APBS's petition presents financial information that documents (b)(4) along with (b)(4). Based on our review of all of the available information about ABSR, and our consultation with DOE, EPA has concluded that ABSR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting APBS's request for a temporary extension of ABSR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by [REDACTED] ABSR (b)(4) [REDACTED] (b)(4) applied by DOE [REDACTED] (b)(4) applied by DOE [REDACTED], EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ Petition at 2.

⁸ Petition at 8.

⁹ Petition at 12, and Tab A, DOE Form PI-588, 3.7.

¹⁰ Petition at 15.

¹¹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

FEB 10 2017

OFFICE OF
AIR AND RADIATION

Mr. Shai Even
Senior Vice President and Chief Financial Officer
Alon Refining Krotz Springs, Inc.
12700 Park Central Avenue
Suite 1600
Dallas, Texas 75251

Dear Mr. Even:

I am writing in response to the petition from Alon Refining Krotz Springs, Inc. (ARKS) for an extension of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for the Alon Krotz Springs refinery in Krotz Springs, Louisiana. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. ARKS's refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, ARKS submitted a petition to the EPA dated August 31, 2016 to extend the exemption for the Alon Krotz Springs Refinery (b) (4)

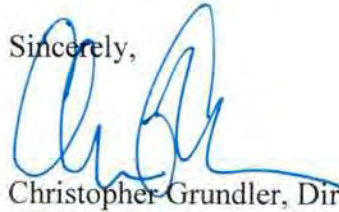
(b) (4) from January 1, 2016 through December 31, 2016.

(b) (4) The EPA is addressing ARKS's request for 2016 in this decision.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that ARKS will experience "disproportionate economic hardship" at the Alon Krotz Springs refinery by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting ARKS's petition requesting a further extension of the Alon Krotz Springs refinery's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, the Alon Krotz Springs refinery's gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and ARKS is not subject to the requirements of an obligated party for fuel produced at the Alon Krotz Springs refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Grundler', with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Alon Refining Krotz Springs, Inc.'s
Krotz Springs, LA Refinery**

**Contains Information Claimed by
Alon Refining Krotz Springs Inc. to be
Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Alon Refining Krotz Springs, Inc. (“ARKS”) dated August 31, 2016, and supplemented on September 15, 2016, for an extension of the RFS small refinery exemption for the Krotz Springs Louisiana Refinery (“KSR”). (b) (4)

ARKS further supplemented its 2016 petition on December 22 and December 29, 2016, with further financial and RFS compliance cost information. For the reasons described herein, EPA is granting ARKS’s request for a one-year extension of the KSR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

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Both the original RFS statutory provisions enacted pursuant to EPCA, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA's original implementing regulations ("RFS1"), EPA defined "small refineries" as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small

¹ EPCA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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Refinery Study explains the history of and differences between the two DOE studies, and summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCAA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Estimate small refinery impacts by region.
- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 FR 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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were then averaged to derive a disproportionate impact index between 0 and 10. The disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the

⁶ After DOE completed their study, they discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a 2 year extension of their RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refiner's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

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petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

ARKS submitted a petition to EPA dated August 31, 2016, for an extension of the RFS small refinery exemption for the KSR for 2016.¹⁰ ARKS supplemented its petition on September 15, December 22, and December 29, 2016, with further explanation of its hardship conditions, financial information, and RFS compliance cost information. Without an extension of its small refinery exemption, ARKS would be required to comply with the RFS program for the year beginning January 1, 2016.

In support of its petition, ARKS submitted a completed DOE survey form PI-588, which specified the factors that ARKS believes demonstrate disproportionate economic hardship. ARKS also provided a petition document with additional explanation regarding the hardship the refinery would face in complying with the RFS program, and the date (b) (4) by which it hopes compliance with the requirements can reasonably be achieved at the KSR.¹¹ ARKS also provided financial statements and an estimate of its RFS compliance costs in 2016. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that ARKS has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding ARKS's operations, RFS compliance costs and financial condition. ARKS provided most of this information to EPA in its petition and in other supporting documents (*e.g.*, ARKS financial information). EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins for 2013-2015). EPA has not independently verified the accuracy of this information.

A. Summary of ARKS's Operations

ARKS is a wholly owned subsidiary of Alon USA Energy Inc. ("Alon"), and operates a single refinery (the KSR) located in south central Louisiana, on the banks of the Atchafalaya River in St. Landry Parish. The KSR qualified as a small refinery under the RFS1 and RFS2 regulations, since its crude input in 2004 averaged (b) (4) barrels per day (bpd), and was exempt from the RFS standards from 2006 through 2012. EPA granted the KSR a one year extension with certain limitations of the RFS small refinery

¹⁰ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year's RVO.

¹¹ Petition supplement dated September 15, 2016, at 13.

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exemption for compliance year 2013. ARKS did not apply for relief from its RFS obligations in 2014, (b) (4)

The maximum crude oil processing capacity of the KSR is 83,000 bpd.¹² Actual refinery average throughput was (b) (4) through the third quarter of 2016, and throughput was expected to be approximately (b) (4) during the fourth quarter of 2016.¹³

The KSR is a low complexity refinery that produces gasoline, blend stocks (high sulfur diesel and light cycle oil), jet fuel, and heavy oils.¹⁴ A list of primary processing units and approximate capacities is shown in Table 1.

Table 1
KSR Process Information¹⁵

Processing Unit	Capacity
Crude distillation unit	83,000 bpd
Vacuum distillation unit	36,200 bpd
Naphtha hydrotreater	14,000 bpd
Naphtha reformer	13,000 bpd
Catalytic cracking unit	34,000 bpd
Volume of primary liquid fuels products in 2016	(b)(4) (b)(4)
Geographic locations in which fuel will be sold	PADDs 1, 3

The refinery has direct access to the Colonial product pipeline system, which allows distribution of products to markets throughout the southern and eastern United States, and along the Mississippi and Ohio rivers.¹⁷

The KSR produces a (b) (4).¹⁸ ARKS reports that most of the gasoline produced by the KSR is (b) (4).

¹² EIA's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

¹³ Alon USA Energy Inc. 3d Quarter 2016 Results, Alon Press Release, October 27, 2016, available at: <http://www.prnewswire.com/news-releases/alon-usa-energy-inc-reports-third-quarter-2016-results-300353074.html>

¹⁴ Petition supplement dated September 15, 2016, at 1.

¹⁵ Data obtained from EIA's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

¹⁶ RFS cost summary estimate, attached to December 29, 2016 email from Shai Even, Alon, to EPA.

¹⁷ Alon USA Energy Inc. website, Refining, Krotz Springs Refinery, available at: <http://www.alonusa.com/refining/krotz-springs-refinery>, accessed February 1, 2017.

¹⁸ DOE Form PI-588, Sec. 5.4, submitted with petition on August 31, 2016.

¹⁹ DOE Form PI-588, Sec. 4.17, 5.11, submitted with petition on August 31, 2016.

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The KSR does not produce (b) (4)

²⁰

Alon is the largest 7-Eleven licensee in the United States; the KSR however, has no retail operations.^{21,22}

B. Summary of ARKS's RFS Compliance Costs

ARKS provided information on its projected cost of complying with the renewable fuel standard in 2016, absent an extension of the RFS small refinery exemption. The following table presents an estimate of the KSR's 2016 RFS compliance costs using data provided by ARKS, assuming average production of (b) (4) gasoline in 2016, and RIN purchase costs as of December 20, 2016.^{23,24}

Table 2
ARKS's Projected RFS Compliance Costs in 2016

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by KSR	2016 Cost of Renewable Blended by KSR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by KSR	2016 RIN Shortfall/ (Surplus)	12/20/2016 RIN Cost	2016 Projected RIN Cost	2016 Total Projected RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol equivalent	Ethanol equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.128	(b) (4)								
Biomass-based Diesel	1.590	(b) (4)								
Advanced Biofuel	2.010	(b) (4)								
Renewable Fuel	10.100	(b) (4)								
Total Cost					(b) (4)					

²⁰ DOE Form PI-588, Sec. 5.4, 5.6, submitted with petition on August 31, 2016.

²¹ Investor Relations Overview, Company Profile, available at: <http://ir.alonusa.com>

²² DOE Form PI-588, Sec. 5.4, submitted with petition on August 31, 2016.

²³ ARKS originally provided a 2016 RFS compliance cost spreadsheet with its August 31, 2016 petition. ARKS then submitted a revised 2016 RFS compliance cost spreadsheet on September 15, 2016. Table 2 uses RIN prices and gasoline production volumes from a second revised spreadsheet provided as a petition supplement on December 29, 2016, in an email from Shai Even, Alon to EPA.

²⁴ EPA notes that ARKS's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016, and the prices in early 2017 in advance of the compliance deadline. EPA calculated average 2016 RIN prices for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/4/2016 through 12/30/2016. The average costs of RINs in 2016 for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that ARKS may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016. EPA also notes that D6 RINs were trading at \$0.44/RIN on February 2, 2017, using public data from Progressive Fuels Limited,

http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfldaily.pdf.

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In order to generate RINs, a shipper on the (b) (4) can move unblended gasoline to terminals along the (b) (4) (b) (4) and then blend with ethanol. In November 2015 ARKS acquired approximately (b) (4) (b) (4) space to facilitate blending.²⁵

ARKS states that it currently has (b) (4).²⁶ ARKS further states that (b) (4). ARKS states that it has (b) (4). ARKS further states that the (b) (4) and that ARKS is (b) (4). ARKS states that the (b) (4) impacts the purchase of RINs for RFS compliance.²⁷

ARKS considered strategies other than the purchase of RINs to reduce its RFS obligation, to include adding ethanol or biodiesel blending capability at the refinery. ARKS considered (b) (4).

²⁸ In order to (b) (4), ARKS also believes (b) (4) at the KSR. ARKS believes (b) (4).

ARKS also considered (b) (4). ARKS stated that (b) (4) and ARKS (b) (4).³⁰ ARKS also (b) (4).

C. KSR's Financial Condition

This section summarizes the significant facts related to the KSR's financial history and current situation, as described by ARKS in its petition and supplemental information.

²⁵ DOE Form PI-588, Footnote 9, submitted with petition on August 31, 2016.

²⁶ DOE Form PI-588, Sec. 3.18, submitted with petition on August 31, 2016.

²⁷ DOE Form PI-588, Sec. 3.18, 3.19, submitted with petition on August 31, 2016.

²⁸ Petition supplement dated September 15, 2016, at 7.

²⁹ DOE Form PI-588, Footnote 8, submitted with petition on August 31, 2016.

³⁰ Petition supplement dated September 15, 2016, at 7.

³¹ Petition supplement dated September 15, 2016, at 7.

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The KSR does (b) (4), but ARKS states that (b) (4), ARKS believes (b) (4)
 32,33

Table 3 summarizes data from the KSR's financial statements submitted with the original petition and supplements.

Table 3
KSR Balance Sheet Data³⁴

Date	12/31/13	12/31/14	12/31/15	9/30/16
Cash and cash equivalents	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Current assets	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Total assets	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Current liabilities	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Long-term liabilities	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Stockholder's equity	(b) (4)	(b) (4)	(b) (4)	(b) (4)

ARKS states that it has (b) (4) the KSR (b) (4)
 ARKS has (b) (4)
 35 ARKS reports that in addition to the (b) (4)
 ARKS further reports that the (b) (4)
 The KSR (b) (4)
 ARKS also reports that there is currently (b) (4)
 36

Table 4 summarizes data from the KSR's PI-588 survey form on refining margins at the Krotz Springs, LA refinery, and from the refinery's 2013, 2014, and 2015 income

³² DOE Form PI-588, Sec. 3.15, submitted with petition on August 31, 2016.

³³ Petition supplement, dated September 15, 2016, at 3.

³⁴ Data for 12/31/13 and 12/31/14 are taken from the Petition, dated August 31, 2016, Tab C. Data for 12/31/15 and 9/30/16 are taken from supplemental financial information submitted in December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

³⁵ DOE Form PI-588, footnote 1, submitted with petition on August 31, 2016.

³⁶ DOE Form PI-588, footnote 1, submitted with petition on August 31, 2016.

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statements provided by ARKS.³⁷ Data for the nine months ended September 30, 2016, were provided by ARKS on December 22, 2016, and from a publicly available source.^{38,39}

Table 4
KSR Net Income (Loss) and Refining Margins⁴⁰

Year	2013	2014	2015	Nine months ended 9/30/16
KSR gross refining margin, \$ per bbl	(b) (4)			2.94 ⁴¹
KSR 2013-2015 average gross refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average gross refining margin, \$ per bbl			12.32	
National nine-month 2016 average gross refining margin, \$ per bbl ⁴²				8.83
KSR net refining margin, \$ per bbl	(b) (4)			⁴³
KSR 2013-2015 average net refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average net refining margin, \$ per bbl			7.35	
National nine-month 2016 average net refining margin, \$ per bbl				4.28

³⁷ Gross refining margin is a measure of a refinery's profitability typically calculated by summing total product revenue, then subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refineries may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

³⁸ Supplemental financial information submitted December 22, 2016, email from Mr. Shai Even, Alon, to EPA.

³⁹ Alon USA Energy Inc. 3d Quarter 2016 Results, Alon press release, October 27, 2016, available at: <http://www.prnewswire.com/news-releases/alon-usa-energy-inc-reports-third-quarter-2016-results-300353074.html>.

⁴⁰ The national average refinery margins for 2013–2015 presented for comparison were provided to EPA by DOE from publically available data.

⁴¹ Alon USA Energy Inc. 3d Quarter 2016 Results, Alon Press Release, October 27, 2016, available at: <http://www.prnewswire.com/news-releases/alon-usa-energy-inc-reports-third-quarter-2016-results-300353074.html>.

⁴² EPA calculated the nine months ended September 30, 2016 national average refining margins from publically available data. EPA also notes that the refining margins are calculated prior to accounting for taxes, depreciation, and finance charges.

⁴³ Average of first three quarters net refinery margins, 2016, KSR, supplemental financial information submitted December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

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KSR operating income (loss), \$ million	(b) (4)			
KSR net income (loss), \$ million	(b) (4)			

RFS compliance cost of (b) (4) is included in cost of sales in the operating and net income figures for the nine months ended September 30, 2016, in Table 4.⁴⁴

ARKS provided EPA with a cash flow statement for the refinery for the nine months ended September 30, 2016. The (b) (4) and (b) (4)

(b) (4) ARKS's (b) (4)

IV. Application of the Criteria for Hardship Relief

EPA may extend the temporary RFS exemption for the KSR if EPA determines that the refinery would experience disproportionate economic hardship in complying with the RFS program. This section provides the analysis and rationale for our granting ARKS's petition to extend the small refinery exemption for the KSR.

A. DOE's Evaluation of KSR

EPA asked DOE to evaluate whether the KSR will experience "disproportionate economic hardship" in complying with its RFS requirements. EPA provided DOE all of the information described in Section III. Table 5 summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

Table 5⁴⁷
DOE Evaluation of ARKS's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	5
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	10

⁴⁴ Note to Financial Statements, September 30, 2016, at 12 attached to December 22, 2016, email from Mr. Shai Even, Alon, to EPA.

⁴⁵ Statement of Cash Flows, nine months ended September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

⁴⁶ Statement of Cash Flows, nine months ended September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

⁴⁷ The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	
e	Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics			
a	Relative refining margin measure ⁴⁸	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d	RINs net revenue or cost ⁴⁹	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		
	Ranking (subtotal x 0.50)		
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	
	Subtotal (average)		
	Ranking (subtotal x 0.50)		

⁴⁸ DOE has provided national average refining industry gross and net margins for 2013–2015, and EPA has calculated the refining industry gross and net margins for the nine months ended September 30, 2016, based on public data. Average industry gross margin and net margin for 2013–2015 were \$12.32/bbl and \$7.35/bbl, respectively, and for the nine months ended September 30, 2016 these were \$8.83/bbl and \$4.28/bbl, respectively (net margin only includes direct operating expenses; it does not include financial expenses such as interest, and depreciation and amortization). KSR's average gross and net refinery margins over 2013–2015 were (b) (4) and (b) (4), respectively, and (b) (4) and (b) (4), respectively, over the nine months ended September 30, 2016. DOE scored this metric based on the average gross and net refinery margins over 2013-2015.

⁴⁹ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

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DOE has previously considered a refinery to experience disproportionate economic hardship if both rankings in Table 5 are equal to or greater than 1.0 (see DOE's Small Refinery Study for more detailed explanation). The first ranking (disproportionate impacts) is a combination of the disproportionate structural impact index and disproportionate economic impact index, and the second ranking is the viability index.

(b)(4) applied by DOE

the KSR (b)(4) applied by DOE

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if only one of the rankings under Table 5 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."⁵⁰ (b)(4) applied by DOE the KSR's

(b)(4) applied by DOE

(b)(4) applied by DOE

B. EPA's Evaluation of ARKS's Hardship Petition

EPA has evaluated all of the information described in Section III., as well as DOE's analysis of the KSR, to independently determine whether the KSR will experience "disproportionate economic hardship" from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that the KSR will experience "disproportionate economic hardship" from compliance with the RFS program for the year 2016.

We have considered (b)(4) applied by DOE

the KSR (b)(4) applied by DOE

EPA has the responsibility for making the ultimate decision after considering DOE's evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite—disproportionate economic hardship—involves "examining the impact of compliance costs on a refinery's ability to maintain profitability and competitiveness—i.e., viability—in the long term."⁵¹

⁵⁰ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

⁵¹ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

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We evaluate viability as an economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.” DOE Small Refinery Study at 3. DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.” *Id.* We evaluate viability in similar manner. We consider whether the KSR will remain a competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year’s financial statements, but also in the context of assessing the longer term prospects for the refinery. We also evaluate viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine whether the KSR faces a “disproportionate economic hardship” from compliance, and not merely an economic impact. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of “disproportionate economic hardship” from compliance with a small refinery’s RFS obligations. Here, we find that the KSR’s compliance with its 2016 RFS obligations will significantly impact its viability.

The KSR’s operating income for the nine months ended September 30, 2016 is (b) (4), which includes RIN costs of (b) (4) reflected in cost of sales.^{52,53} This (b) (4) compared to 2013, the last year for which the KSR was granted an RFS hardship exemption, (b) (4). The KSR’s net income for the nine months ended September 30, 2016 was (b) (4) in 2013 and (b) (4) in 2015, see Table 4 in Section III.C. The KSR’s estimated 2016 total RFS compliance costs are approximately (b) (4), see Table 2 in Section III.B. The KSR’s (b) (4) for the nine months ended September 30, 2016, suggests that the KSR may experience substantial difficulty in complying with its 2016 RFS obligations and (b) (4).

EPA reviewed the KSR’s average gross and net refining margins over 2013-2015, and over the nine months ended September 30, 2016.⁵⁴ The KSR’s average annual gross and net refining margins over 2013-2015 (b) (4) than national industry averages for the three-year period 2013-2015 (\$12.32/bbl gross refining margin and \$7.35/bbl net refining margin). The KSR’s gross and net refining margins

⁵² Statement of Operations, September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon to EPA.

⁵³ Note to Financial Statements, September 30, 2016, at 10, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

⁵⁴ ARKS provided Q4 estimates for the refinery operating margin, refinery direct operating expense, net margin, and operating income/loss. EPA did not use this information in its analysis because it was provided on a quarterly and incomplete basis, rather than as a full year of complete financial data.

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over the nine months ended September 30, 2016, are (b) (4), respectively. Those margins are (b) (4) than national industry averages of \$8.83/bbl and \$4.28/bbl, respectively, for the same nine-month period. The (b) (4) KSR net refining margin over the nine months ended September 30, 2016, indicates a (b) (4) in financial performance from 2015.

EPA recognizes that cash flow limitations may hinder the ability of a refinery to purchase RINs for RFS compliance throughout the compliance year and to take advantage of procurement opportunities when the RIN market is perceived to be priced favorably. The KSR has (b) (4)

⁵⁵ The KSR's cash flow statement for the nine months ended September 30, 2016 indicates that (b) (4)

⁵⁶ (b) (4)

57

Thus, it appears that the KSR (b) (4) during the nine months ended September 30, 2016, to satisfy its 2016 RFS obligations as they accrued.

In order to show "disproportionate economic hardship," a small refinery needs to show it faces RFS compliance costs that would "significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure."⁵⁸ EPA believes this is the case for the KSR. The KSR is a small refinery with higher production capacity but production levels under the maximum as defined for purposes of the RFS small refinery exemption, and with no vertically integrated operations. Refining is a cyclical business, and the KSR had been (b) (4) for several years leading up to petition year 2016. The KSR net refining margin, however, for the nine months ended September 30, 2016, (b) (4), indicates a refinery that was (b) (4) in 2016. The KSR's (b) (4)

through September 30, 2016, was a (b) (4). RFS compliance cost relief would likely (b) (4)

. While the KSR had been (b) (4) during 2014 and 2015, its (b) (4)

EPA recognizes that the KSR's cash flow was (b) (4) for the first nine months ending September 30, 2016, with respect to (b) (4). 2016 appears to be (b) (4)

⁵⁹ Because of the (b) (4)

⁵⁵ Petition supplement dated September 15, 2016, at 4, 8.

⁵⁶ Statements of Cash Flows, September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

⁵⁷ Statements of Cash Flows, September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

⁵⁸ DOE Small Refinery Study at 36.

⁵⁹ Statements of Operations, September 30, 2016, attached to December 22, 2016 email from Mr. Shai Even, Alon, to EPA.

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(b) (4) [REDACTED], we do not agree with (b)(4) applied by DOE [REDACTED] ARKS's (b)(4) applied by DOE [REDACTED] the KSR's (b)(4) applied by DOE [REDACTED] the KSR's (b)(4) applied by DOE [REDACTED]. It appears that ARKS's overall financial situation is such that it might not be able to fully comply with its 2016 RFS obligations without causing a significant impairment of the refinery's operations.

Finally, EPA recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. It is a normal practice in the refining industry for refineries to identify and implement, when possible, projects that improve the efficiency, reliability or safety of their refineries. The cost of RFS compliance, either through purchasing and blending renewable fuels or purchasing RINs, or a combination of both, reduces funds available to pay for other potential projects to improve the efficiency, reliability and safety of a refinery. However, in order to show "disproportionate economic hardship," a small refinery needs to show that it faces RFS compliance costs that would "significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure." See DOE Small Refinery Study at 36. As discussed above, after considering the full financial picture of the KSR for the nine months ended September 30, 2016 and prior years, EPA does find that compliance with its RFS obligations for 2016 would prevent the KSR from being profitable, and threaten the KSR's viability. EPA recognizes that the financial condition of a refinery due to the state of the regional refining business, business decisions, and market conditions may impact management decisions to modify or defer capital projects. EPA however also recognizes the need for a refinery to articulate and implement a plan for eventual compliance with its RFS obligations.

For all of these reasons, we find that the KSR has demonstrated that compliance with its 2016 RFS requirements will result in "disproportionate economic hardship." Based on this evaluation, an extension of the small refinery temporary exemption is warranted.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with the RFS requirements. Based on our analysis of all of the available information about the KSR, and our consultation with DOE, EPA has concluded that the KSR will experience "disproportionate economic hardship" in complying with the RFS requirements. Therefore, EPA is granting ARKS's request for a temporary extension of the KSR's small refinery hardship exemption for 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings,

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pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000070

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. Michael Norman
Vice President – Environmental & Regulatory Affairs
Alon Refining Krotz Springs, Inc.
12700 Park Central Drive
Suite 1600
Dallas, Texas 75251

Dear Mr. Norman:

I am writing in response to the petition from Alon Refining Krotz Springs, Inc. (“ARKS”) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for ARKS’s refinery in St. Landry Parish, Louisiana (the “Krotz Springs Refinery”). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Krotz Springs Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause “disproportionate economic hardship.” Pursuant to these provisions, ARKS submitted a petition to EPA dated December 13, 2017, to extend the exemption for the Krotz Springs Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of the Krotz Springs Refinery’s RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Krotz Springs Refinery’s gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and ARKS is not subject to the requirements of an obligated party for fuel produced at the Krotz Springs Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Alon Refining Krotz Springs, Inc.'s
Krotz Springs, Louisiana Refinery**

**Contains Information Claimed by
Alon Refining Krotz Springs, Inc.
To be Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Alon Refining Krotz Springs, Inc (“ARKS”) dated December 13, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for Alon Refining’s Krotz Springs, Louisiana (“KSR”) refinery in 2017. For the reasons described herein, EPA is granting ARKS’s request for an extension of KSR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) applied by DOE KSR’s (b)(4) applied by DOE

(b)(4) applied by DOE KSR’s (b)(4) applied by DOE

KSR’s (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE KSR (b)(4) applied by DOE (b)(4) applied by DOE. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4) applied by DOE (b)(4) applied by DOE.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE KSR (b)(4) applied by DOE (b)(4) applied by DOE. Therefore (b)(4) applied by DOE KSR (b)(4) applied by DOE (b)(4) applied by DOE.

Table 1⁴
DOE Evaluation of KSR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	■
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	■
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	■
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	■
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	■

³ From DOE recommendation for KSR transmitted to EPA on February 22, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	■
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	■
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	■
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		■
Ranking (subtotal x 0.50)		■
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	■
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	■
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	■
Subtotal (average)		■
Ranking (subtotal x 0.50)		■

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

ARKS submitted a petition to EPA on December 13, 2017 for an extension of the RFS small refinery exemption for KSR for 2017. In support of its petition, ARKS submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that ARKS believe demonstrate DEH. ARKS stated that (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). KSR's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4) respectively. (Petition at Tab A, DOE Form PI-588, 3.6, 3.7.)

⁶ DOE has not scored this category for any hardship petition evaluations.

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(b) (4) ARKS estimates that in order to (b) (4)
(b) (4)
(b) (4)
(b) (4)
KSR's average net refinery margin for the period 2014-2016
was (b) (4),⁹ (b) (4) ARKS states that KSR (b) (4)
(b) (4)
(b) (4)¹⁰

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, ARKS's petition presents financial information that documents refinery margins (b) (4) along with other metrics of (b) (4). Based on our review of all of the available information about KSR, and our consultation with DOE, EPA has concluded that KSR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting ARKS's request for a temporary extension of KSR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE KSR (b)(4) applied by DOE
(b) (4)
(b) (4) EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ Petition at 6.

⁸ Petition at 10.

⁹ Petition at Tab A, DOE Form PI-588, 3.7.

¹⁰ Petition at 3.

¹¹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

MAY 04 2017OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President – Finance, Calumet Specialty Products Partners, L.P.
Calumet Montana Refining, LLC
1900 10th Street NE
Great Falls, Montana 59404

Dear Mr. Krutz:

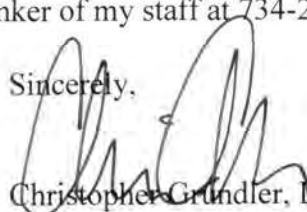
I am writing in response to the petition from Calumet Montana Refining, LLC (CMRC) for a one-year extension of the small refinery exemption from the requirements of the Renewable Fuel Standard (RFS) program for the Calumet Montana Refinery (CMR) in Great Falls, Montana. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The CMR qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause “disproportionate economic hardship.” Pursuant to these provisions, CMRC submitted a petition to the EPA dated December 29, 2016 to extend the exemption for the CMR from January 1, 2016 through December 31, 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that CMRC will experience “disproportionate economic hardship” at the CMR by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting CMRC’s petition for a one-year extension of the CMR’s RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, CMRC’s gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and CMRC is not subject to the requirements of an obligated party for fuel produced at the CMR during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,


Christopher Grindler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Calumet Montana Refining, LLC's
Calumet Montana Refinery**

**Contains Information Claimed by
Calumet Montana Refining, LLC to be
Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Calumet Montana Refining, LLC (“CMRC”) dated December 29, 2016, for a one-year extension of the RFS small refinery exemption for the Calumet Montana Refinery (“CMR”), for obligation year 2016. For the reasons described herein, EPA is granting CMRC’s request for a one-year extension of the CMR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as

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those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPAAct 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at,

<http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance costlier than for large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impacts index between 0 and 10. The

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. See Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.^[8] In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an

⁶ After DOE completed the study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

⁷ Addendum to the Small Refinery Exemption Study, “An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program.

EPA considers DOE's assessment of whether a small refinery will face disproportionate impacts in complying with its RFS obligations. The DOE analysis informs EPA's finding of whether “disproportionate economic hardship” exists and in turn EPA's resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.¹⁰ In addition to the metrics DOE applies in assessing

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

¹⁰ EPA also considers DOE's analysis of a small refinery's viability, which DOE assesses as the second component of “disproportionate economic hardship.” DOE Small Refinery Study at 3. (“Disproportionate economic hardship must encompass two broad components...and an effect sufficient to cause a significant impairment of the refinery operations.”) DOE Small Refinery Study at 27, 36 (Refiner viability refers to the ability of the refiners to remain competitive and profitable.”). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on “viability,” but we are changing our approach. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship, compliance with RFS obligations may

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disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

CMRC submitted a petition to EPA dated December 29, 2016, for an extension of the RFS small refinery exemption for the CMR for 2016.¹¹ CMRC submitted further petition supplements on January 12 and 26, 2017, February 27, 2017, and March 1, 3, 17 and 18, 2017. Without an extension of its small refinery exemption, the CMR would be required to comply with the RFS program beginning January 1, 2016.

In support of its petition, CMRC submitted a completed DOE survey form PI-588, which highlights factors that CMRC believes demonstrate disproportionate economic hardship. CMRC provided RFS compliance cost estimates for 2016 and financial statement information for the years 2013-2016. CMRC also provided a discussion of the hardship the refinery would face in complying with the RFS program, and the date, (b) (4),¹² by which it hopes compliance with the requirements can reasonably be achieved at the CMR. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that CMRC has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding the CMR's operations, RFS compliance costs and financial condition. CMRC provided most of this information to EPA in its petition and in other supporting documents (*e.g.*, CMR financial information). EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of the CMR's Operations

CMRC, a wholly owned subsidiary of Calumet Specialty Products Partners, L.P. (Calumet), operates a refinery in Great Falls, Montana (the CMR).¹³ The CMR qualified as a small refinery under the RFS1 and RFS2 regulations, and was exempt from the RFS

impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery's operations are not significantly impaired.

¹¹ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year's RVO.

¹² Petition supplement dated January 12, 2017, email John Krutz, Calumet, to Greg Piotrowski, EPA.

¹³ Petition at 2.

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standards from 2006 through 2012. CMRC did not petition for relief from its RFS compliance obligations for compliance years 2013 through 2015.¹⁴

The CMR is (b) (4)

¹⁵ The refinery historically had a crude oil throughput capacity of approximately (b) (4); however, Calumet expanded the throughput of the refinery to 24,000 bpd in 2015.¹⁶ The refinery operated at a rate of (b) (4) through the first three quarters of 2016.¹⁷ In addition to asphalt, the refinery produces gasoline, jet fuel, diesel, and unfinished gasoline blend stocks.¹⁸ A list of primary processing units and approximate production rates is shown below in Table 1.

Table 1
CMR Process Information¹⁹

Processing Unit	Capacity
Crude distillation unit	25,000 bpd
Vacuum distillation unit	20,000 bpd
Catalytic hydrocracker	24,000 bpd
Naphtha hydrotreater	2,500 bpd
Naphtha reformer	1,000 bpd
Diesel hydrotreater	6,000 bpd
Kerosene and jet fuel hydrotreater	5,000 bpd
Hydrogen plant	7 million std cubic ft H ₂ /day
Asphalt production capacity	10,000 bpd
Estimated volume of primary liquid fuels products for the 12 months of 2016	(b) (4) ²⁰ (b) (4)
Geographic locations in which fuel is sold	PADD 4

The CMR states that its (b) (4)

²¹ CMRC (b) (4)

²² CMRC “(b) (4)”

¹⁴ Petition at 1, footnote 1.

¹⁵ Petition at 2.

¹⁶ Petition at 2.

¹⁷ Petition at 2.

¹⁸ Petition at 2.

¹⁹ Data obtained from DOE’s Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

²⁰ From RFS cost summary estimate for 2016, Petition at Tab B.

²¹ Petition at 2.

²² Petition at 5.

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(b) (4)

²³ CMRC notes that the (b) (4)²⁴ CMRC

expected (b) (4)

²⁵**B. Summary of the CMR's RFS Compliance Costs**

CMRC provided information on its projected cost of complying with the renewable fuel standards in 2016, absent an extension of its RFS small refinery exemption. CMRC provided an estimate of RFS compliance costs for the entire year of 2016. The following table contains this data provided by CMRC to detail the CMR's compliance costs for the entire year of 2016.²⁶ The cost of purchased RINs in Table 2 below reflects market costs on December 6, 2016. This date was chosen by CMRC because it "(b) (4)

²⁷ 21,28,29

Table 2
CMR Projected RFS Compliance Costs for 2016³⁰

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by CMR	2016 Cost of Blended Renewable by CMR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by CMR	2016 RIN Shortfall/ (Surplus)	2016 Cost of Purchased/ Carried Over RINs	2016 Total Cost of Purchased/ Sold RINs	2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol Equivalent	Ethanol Equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.12800	(b) (4)								
Biomass-based diesel	1.59000	(b) (4)								
Advanced Biofuel	2.01000	(b) (4)								
Renewable Fuel	10.1000	(b) (4)								
Total Cost					(b) (4)					

²³ Petition at 5–6.²⁴ Petition at 6.²⁵ Petition at 6.²⁶ Table 2 uses RIN prices from CMRC's petition in an estimate of its 2016 RFS compliance costs, Petition at Tab B.²⁷ Email communication from John Krutz, Calumet, to Greg Piotrowski, EPA, dated January 12, 2017.²⁸ EPA notes that CMRC's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016. EPA calculated average 2016 RIN prices for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/4/2016 through 12/30/2016. The average costs of RINs in 2016 for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that CMRC may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016.²⁹ EPA notes that D6 RINs were trading at \$0.38/RIN as recently as March 2, 2017,http://www.progressivefuelslimited.com/web_data/PFL_RIN_Recap.pdf³⁰ Table 2 uses gasoline and diesel production levels of (b) (4), respectively, Petition at Tab B.

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CMRC states that (b) (4)

³¹ CMRC considered (b) (4)

³² CMRC also stated that (b) (4)

³³

Calumet's (b) (4)

³⁴

During 2016, as Calumet's (b) (4)
³⁵ CMRC stated that its (b) (4)

Calumet (b) (4)

³⁶

CMRC recognized (b) (4)

³⁷

C. CMR's Financial Condition

This section summarizes the significant facts related to the CMR's financial history and current situation, as described by CMRC in its petition.

Table 3 below summarizes data from attachments and supplements to CMRC's petition, showing current assets, short-term debt and long-term debt at year-end 2013, 2014, 2015, and 2016.³⁸

³¹ Petition at 6.

³² Petition at 6.

³³ Petition at 6.

³⁴ Petition at 4.

³⁵ Petition at 4.

³⁶ Petition at 4.

³⁷ Petition supplement dated March 3, 2017, income statement for 2016.

³⁸ The balance sheet data in Table 4 for 12/31/15 is taken from the petition dated December 29, 2016 at Tab D. The balance sheet data in Table 4 for 12/31/14 is taken from the petition supplement dated January 12, 2017. The balance sheet data for 12/31/13 is taken from a Petition supplement dated January 26, 2017. The balance sheet data for 12/31/16 is taken from a Petition supplement dated March 1, 2017.

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Table 3
CMR Balance Sheet Data (in millions)

Date	12/31/13	12/31/14	12/31/15	12/31/16
Current Assets	(b) (4)			
Current Liabilities	(b) (4)			
Long-term Liabilities	(b) (4)			
Partner's Capital	(b) (4)			

CMRC is a (b) (4)

³⁹ In April

of 2016, CMRC became a (b) (4)

Calumet's

(b) (4)

⁴⁰ On October 18, 2016, Calumet's (b) (4)

⁴¹

Calumet is (b) (4)

⁴² The income statements included with the petition were (b) (4)

⁴³

Table 4 below summarizes data from CMRC's PI-588 survey form on refining margins,⁴⁴ from CMRC's income statements submitted as part of its petition, and from the supplemental financial information submitted on January 12, 2017.

³⁹ Petition at 3.

⁴⁰ Petition at 3.

⁴¹ Petition at 3.

⁴² Petition at 2.

⁴³ Petition at 2.

⁴⁴ Gross refining margin is a measure of a refinery's profitability, and is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

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Table 4
CMRC Net Income (Loss)⁴⁵ and Refining Margins⁴⁶

Year	2013	2014	2015	2016
CMRC gross refining margin, \$ per bbl	(b) (4)			
CMRC 2014-2016 average gross refining margin, \$ per bbl				(b) (4)
National 2014-2016 average gross refining margin, \$ per bbl				11.40
CMRC net refining margin, \$ per bbl	(b) (4)			
CMRC 2014-2016 average net refining margin, \$ per bbl				(b) (4)
National 2014-2016 average net refining margin, \$ per bbl				6.52
CMRC net income (loss) from operations, \$ million	(b) (4)			
CMRC net income (loss), \$ million	(b) (4)			

The CMR's (b) (4)

⁴⁷ (b) (4)
has stated to EPA that (b) (4)

CMRC

⁴⁸

On March 17, 2017, CMRC submitted supplemental petition information which included (b) (4)

⁴⁹ (b) (4)

⁵⁰ We note that this (b) (4)

⁵¹

⁴⁵ The CMR's operating and net income for 2014 and 2015 were taken from income statements included with the Petition on December 29, 2016, at Tab C. The CMR's operating and net income for 2013 were provided by CMRC as supplemental information on January 12, 2017. The CMR's operating and net income for 2016 were provided by CMRC as supplemental information on March 3, 2017.

⁴⁶ EPA used the refining margins for 2014 and 2015 as provided by CMRC in its petition dated December 29, 2016. The CMR refining margin data for 2013 was provided as supplemental information by CMRC on January 12, 2017. The CMR refining margin data for 2016 was provided as supplemental information by CMRC on March 3, 2017. The national average refinery margins presented were provided by DOE to EPA from publicly available data.

⁴⁷ Income Statement for 2016, submitted as a Petition supplement on March 3, 2017.

⁴⁸ Email from John Krutz, Calumet, to Greg Piotrowski, EPA, dated February 16, 2017.

⁴⁹ Petition supplement dated March 17, 2017, at Tab B.

⁵⁰ Petition supplement dated March 17, 2017, at 2.

⁵¹ Petition supplement dated March 17, 2017, at Tab B.

CMRC believes that (b) (4)

52

CMRC did not provide EPA with a statement of cash flows for 2016;⁵³ CMRC did provide EPA with a free cash flow analysis for the CMR for 2016.⁵⁴

CMRC's petition states:

(b) (4)

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for the CMR if EPA determines that the refinery would experience “disproportionate economic hardship” in complying with the RFS program. This section provides the analysis and rationale for our grant of CMRC's petition to extend the small refinery exemption for the CMR.

A. DOE's Evaluation of the CMR

EPA asked DOE to evaluate whether the CMR will experience “disproportionate economic hardship” in complying with its RFS obligations. EPA provided DOE all of the information described in Section III above. Table 5 below summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

⁵² Petition at 3.

⁵³ Petition at 2.

⁵⁴ Petition supplement dated March 17, 2017, at Tab B.

⁵⁵ Petition at 15.

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Table 5⁵⁶
DOE Evaluation of CMRC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵⁷	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b)(4)
b Renewable fuel blending (% of production)		(b)(4)
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	(b)(4)
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d RINs net revenue or cost ⁵⁸	0 = revenue > cost, 10 = revenue < cost	

⁵⁶ The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

⁵⁷ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015 based on public data (complete year industry data for 2016 is not yet publically available). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The CMR's average 2013–2015 gross and net refinery margins were (b) (4) and (b) (4), respectively. In scoring this metric, DOE only uses the three-year average net refining margins for the industry and for the CMR.

⁵⁸ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

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Subtotal (average)		
Ranking (subtotal x 0.50)		
3 Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down
Subtotal (average)		
Ranking (subtotal x 0.50)		

The first ranking in Table 5 (disproportionate impacts) is a combination of the disproportionate structural index and disproportionate economic impact index, and the second ranking in Table 5 is the viability index. (b)(4) (applied by DOE)

the CMR (b)(4) applied by DOE

(see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if either of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."⁵⁹ (b)(4) CMR's (b)(4) applied by DOE

CMR's (b)(4) applied by DOE

B. EPA's Evaluation of CMRC's Hardship Petition

EPA has evaluated the information described in Section III., as well as DOE's analysis of CMRC, to determine whether CMRC will experience "disproportionate economic hardship" from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that CMRC will experience "disproportionate economic hardship" and that exemption from its RFS obligations is warranted for 2016.

⁵⁹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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In determining whether CMRC will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts CMRC. EPA generally defers to DOE's assessment due to DOE's expertise on the refining industry. In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. (b)(4) applied by CMRC (b)(4) applied by DOE (b)(4) applied by DOE. These disproportionate impacts disadvantage the refinery relative to the industry average and make compliance with RFS obligations relatively more burdensome. EPA finds that this disproportionate difficulty of compliance indicates that compliance with its RFS obligations would cause CMRC disproportionate economic hardship.

For a disproportionately-impacted refinery like CMRC, its disproportionate economic hardship may be exacerbated by a difficult year for the industry as a whole. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend, coupled with its disproportionate economic and structural impacts, can result in tangible effects on the small refinery, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire RINs for compliance, and the potential to impair refinery operations. In addition, structurally impacted refineries often lack access to capital or credit that can also be necessary to achieve compliance.

CMRC's financial performance further shows that it would suffer disproportionate economic hardship from compliance with its RFS obligations. CMRC operated (b) (4)

For the reasons discussed above, EPA finds that CMRC would suffer a disproportionate economic hardship if it had to comply with its RFS obligations for 2016 and should be granted full relief.⁶⁰

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with the RFS requirements. Based on our analysis of all of the available information about CMRC, and our consultation with DOE, EPA has concluded that CMRC will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements.

⁶⁰ EPA acknowledges that (b)(4) CMRC (b)(4) applied by DOE (b)(4) applied by DOE CMRC's (b)(4) applied by DOE CMRC. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship (see footnote 10), EPA may choose to grant full relief based on its own independent review of the small refinery's information.

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Therefore, EPA is granting CMRC's request for a temporary extension of its RFS hardship exemption through December 31, 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000096

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President, Finance
Calumet Specialty Products Partners, LP
2780 Waterfront Pkwy E Dr
Indianapolis, Indiana 46214

Subject: 2017 Renewable Fuel Standard Small Refinery Hardship Petition
Calumet Montana Refining, LLC
1900 10th Street, NE
Great Falls, Montana 59404

Dear Mr. Krutz:

I am writing in response to the petition from Calumet Montana Refining, LLC ("CMRC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for CMRC's refinery in Great Falls, Montana (the "Great Falls Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Great Falls Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CMRC submitted a petition to EPA dated December 21, 2017, to extend the exemption for the Great Falls Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of CMRC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Great Falls Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and CMRC is not subject to the requirements of an obligated party for fuel produced at the Great Falls Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Grundler", written over a horizontal line.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

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**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Calumet Montana Refining, LLC's
Great Falls, Montana Refinery**

**Contains Information Claimed by
Calumet Montana Refining, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Calumet Montana Refining, LLC (“CMRC”) dated December 21, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for CMRC’s Great Falls, Montana refinery (“CMR”) in 2017. For the reasons described herein, EPA is granting CMRC’s request for an extension of CMR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) CMR’s (b)(4) applied by DOE

(b)(4) applied by DOE CMR’s (b)(4) applied by DOE CMR (b)(4) applied by DOE CMR’s (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by CMR (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) CMR (b)(4) applied by DOE

(b)(4) applied by DOE

Table 1⁴
DOE Evaluation of CMR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)

³ From DOE recommendation for CMR transmitted to EPA on February 27, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

CMRC submitted a petition to EPA on December 21, 2017, for an extension of the RFS small refinery exemption for CMR for 2017. In support of its petition, CMRC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that CMRC believes demonstrate DEH. CMRC stated that CMR (b) (4), and that CMR (b) (4).⁷ CMRC also

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization).

⁶ DOE has not scored this category for any hardship petition evaluations.

⁷ Petition at 3, 4.

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stated that (b) (4) CMR's (b) (4) CMR (b) (4)
⁸ CMRC also stated that CMR (b) (4)
⁹ CMRC reported (b) (4) CMR (b) (4)
¹⁰

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, CMRC's petition presents financial information that documents (b) (4) along with other metrics of (b)(4)

. Based on our review of all of the available information about CMR, and our consultation with DOE, EPA has concluded that CMR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting CMRC's request for a temporary extension of CMR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied that CMR (b)(4) applied by DOE

, EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁸ Petition at 5.

⁹ Petition at 9.

¹⁰ Petition supplement received February 26, 2018, Free Cash Flow for the eight months ended August 31, 2017.

¹¹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
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FEB 10 2017

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President – Finance
Calumet Specialty Products Partners, L.P.
Calumet San Antonio Refining, LLC
7811 S. Presa Street
San Antonio, Texas 78223

Dear Mr. Krutz:

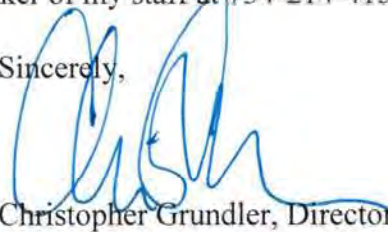
I am writing in response to the petition from Calumet San Antonio Refining, LLC (CSARC) for an extension of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for the Calumet San Antonio Refinery (CSAR) in San Antonio, Texas, for 2016. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. CSAR qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CSARC submitted a petition to the EPA dated August 19, 2016, to extend the exemption for CSAR from January 1, 2015 through December 31, 2015, and from January 1, 2016 through December 31, 2016. The EPA granted CSARC's exemption request for 2015 in a previous decision. The EPA is addressing CSARC's request for 2016 in this decision.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that CSAR will experience "disproportionate economic hardship" by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting CSARC's petition for a one-year extension of CSAR's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, CSAR's gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and CSARC is not subject to the requirements of an obligated party for fuel produced at CSAR during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Grundler', is written over the word 'Sincerely,'.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Calumet San Antonio Refining, LLC's
Calumet San Antonio Refinery**

**Contains Information Claimed by
Calumet San Antonio Refining, LLC to be
Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Calumet San Antonio Refining, LLC (“CSARC”) dated August 19, 2016, for a two-year extension of the RFS small refinery exemption for the Calumet San Antonio Refinery (“CSAR”), for obligation years 2015 and 2016. EPA previously granted the 2015 petition in a separate decision. For the reasons described herein, EPA is granting CSARC’s request for a one-year extension of CSAR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In

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EPA's original implementing regulations ("RFS1"), EPA defined "small refineries" as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and

¹ EPA Act 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at,

<http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impact index between 0 and 10. The

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an

⁶ After DOE completed the study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

⁷ Addendum to the Small Refinery Exemption Study, “An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refinery's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how “other economic factors” may

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

cause a small refinery to experience “disproportionate economic hardship” if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

CSARC submitted a petition to EPA dated August 19, 2016, for an extension of the RFS small refinery exemption for CSAR for 2016.^{10 11} Without an extension of its small refinery exemption, CSAR would be required to comply with the RFS program beginning January 1, 2016.

In support of its petition, CSARC submitted a completed DOE survey form PI-588, which highlights factors that CSARC believes demonstrate disproportionate economic hardship. CSARC supplemented its 2016 petition on December 14, 2016, with updated RFS compliance cost estimates and financial statement information for the nine months ended September 30, 2016.¹² CSARC also provided additional explanation regarding the hardship the refinery would face in complying with the RFS program, and the date (b)(4)¹³ by which it hopes compliance with the requirements can reasonably be achieved at CSAR. CSARC further supplemented its 2016 petition on December 22, 2016, with a revised income statement for the 9 months ended September 30, 2016, and a September 30, 2016 balance sheet.¹⁴ All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that CSARC has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding CSAR’s operations, RFS compliance costs and financial condition. CSARC provided most of this information to EPA in its petition and in other supporting documents (*e.g.*, CSAR financial information). EPA obtained the remaining information from public sources and from DOE (*e.g.*, average industry refining margins for 2013–2015). EPA has not independently verified the accuracy of this information.

A. Summary of CSAR’s Operations

CSARC, a wholly owned subsidiary of Calumet Specialty Products Partners, L.P. (Calumet), operates a refinery in San Antonio, Texas (CSAR). CSAR qualified as a small refinery under the RFS1 and RFS2 regulations, and was exempt from the RFS standards

¹⁰ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year’s RVO.

¹¹ CSARC petitioned for, and received, an exemption from RFS compliance for CSAR for 2013, 2014, and 2015.

¹² Petition supplement dated December 14, 2016, at 2, 4, and Tabs A and B.

¹³ Petition supplement dated December 14, 2016, at 5.

¹⁴ Petition supplements as attachments, email from John Krutz, Calumet, to EPA, on December 22, 2016.

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from 2006 through April 18, 2011.¹⁵ EPA granted CSAR one year extensions of the RFS small refinery exemption for compliance years 2013, 2014, and 2015, respectively.

The refinery has an aggregate crude oil capacity of approximately 20,000 barrels per day (bpd). The refinery operated at a (b)(4) of (b) (4) through July of 2016.¹⁶ The refinery processes crude oil into jet fuel, diesel, unfinished gasoline blend stocks, finished gasoline, other fuel products and specialty solvents. The refinery has five primary processing units including hydrotreating, catalytic reforming, and solvents distillation. A list of primary processing units and approximate production rates is shown below in Table 1.

Table 1
CSAR Process Information¹⁷

Processing Unit	Capacity
Crude distillation unit	20,000 bpd
Naphtha hydrotreater	6,000 bpd
Naphtha reformer	6,000 bpd
Diesel hydrotreater	7,000 bpd
Estimated volume of primary liquid fuels products for the 12 months of 2016	(b) (4)
Geographic locations in which fuel is sold	PADD 3

CSAR's (b) (4)

.¹⁹ CSAR's (b) (4)

.²⁰ CSARC (b) (4)

²¹

¹⁵ AGE Refining, Inc. owned the refinery until Nustar Energy, L.P. purchased the refinery from AGE on April 19, 2011. AGE had previously declared bankruptcy on February 9, 2010, liquidated the refinery's assets, and operated the refinery while in bankruptcy until its sale to Nustar Energy. On December 6, 2011, the bankruptcy trustee petitioned EPA for an extension of the refinery's RFS exemption beyond 2010. EPA extended the refinery's exemption until April 19, 2011, the date on which the refinery was purchased by Nustar Energy. CSARC purchased the refinery from Nustar Energy on January 3, 2013. CSARC received extensions of the refinery's previous exemption for the years 2013, 2014, and 2015, from EPA.

¹⁶ Petition dated August 19, 2016, at 2.

¹⁷ Data obtained from DOE's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

¹⁸ From RFS cost summary estimate for 12 months of 2016 submitted as part of petition supplement, December 14, 2016, Tab A.

¹⁹ Petition dated August 19, 2016, at 2.

²⁰ Petition dated August 19, 2016, at 2.

²¹ Petition dated August 19, 2016, at 6.

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B. Summary of CSAR's RFS Compliance Costs

CSARC provided information on its projected cost of complying with the renewable fuel standards in 2016, absent an extension of its RFS small refinery exemption. CSARC provided RFS compliance costs based on actual data for the first nine months of 2016, as well as an estimate of RFS compliance costs for the entire year of 2016. The following two tables contain these data provided by CSARC, and both are presented here to detail CSAR's compliance costs for 2016; the RFS compliance costs in Table 2 relate directly to the income figures presented later in this document for the nine months ended September 30, 2016.²² The cost of purchased RINs in Tables 2 and 3 below reflect market costs on December 6, 2016. This date was chosen by CSARC because it

“(b) (4)

”23, 24

Table 2
RFS Compliance Costs for Nine Months Ended September 30, 2016²⁵

Renewable Fuel Type	2016 Standard	Nine Month 2016 Renewable Volume Obligation	Nine Month 2016 Renewable Volume Blended by CSAR	Nine Month 2016 Cost of Blended Renewable by CSAR	Nine Month 2016 Total Cost/ (Benefit) of Blended Renewable	Nine Month 2016 Total RINs Separated by CSAR	Nine Month 2016 RIN Shortfall/ (Surplus)	Nine Month 2016 Cost of Purchased/ Carried Over RINs	Nine Month 2016 Total Cost of Purchased/ Sold RINs	Nine Month 2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol Equivalent	Ethanol Equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.12800	(b) (4)								
Biomass-based diesel	1.59000	(b) (4)								
Advanced Biofuel	2.01000	(b) (4)								
Renewable Fuel	10.1000	(b) (4)								
Total Cost					(b) (4)					

²² Tables 2 and 3 use RIN prices from CSARC's petition supplement in an estimate of its compliance costs. See petition supplement dated December 14, 2016, at Tab A.

²³ Email communication from John Krutz, Calumet, to EPA, dated January 12, 2017.

²⁴ EPA notes that CSARC's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016. EPA calculated average 2016 RIN prices for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/4/2016 through 12/30/2016. The average costs of RINs in 2016 for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that CSARC may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016. EPA also notes that D6 RINs were trading at \$0.44/RIN on February 2, 2017, using public data from p Fuels Limited, http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfldaily.pdf.

²⁵ Table 2 is an RFS cost summary for the first nine months of 2016 using actual cost data. This summary uses gasoline and diesel production levels of (b) (4) and (b) (4), respectively, petition supplement dated December 14, 2016, at Tab A.

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Table 3
Projected RFS Compliance Costs for 2016 ²⁶

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by CSAR	2016 Cost of Blended Renewable by CSAR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by CSAR	2016 RIN Shortfall/ (Surplus)	2016 Cost of Purchased/ Carried Over RINs	2016 Total Cost of Purchased/ Sold RINs	2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol Equivalent	Ethanol Equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.12800	(b) (4)								
Biomass-based diesel	1.59000	(b) (4)								
Advanced Biofuel	2.01000	(b) (4)								
Renewable Fuel	10.1000	(b) (4)								
Total Cost					(b) (4)					

(b) (4)

²⁷ (b) (4)

28

(b) (4)

CSARC must (b) (4)

CSARC (b) (4)

²⁹ CSARC (b) (4)³⁰

CSARC stated in its PI-588 survey for (b) (4)

31

Calumet (b) (4)

Calumet (b) (4)
CSARC believes (b) (4)

³² During 2016, as Calumet's

²⁶ Table 3 is an RFS compliance cost estimate for the twelve months of 2016, petition supplement dated December 14, 2016, at 1. This projection uses gasoline and diesel production levels of (b) (4) respectively, petition supplement dated December 14, 2016, at Tab A.

²⁷ Petition dated August 19, 2016, at 5.

²⁸ Petition dated August 19, 2016, at 6.

²⁹ Petition supplement dated December 14, 2016, at 2.

³⁰ Petition supplement dated December 14, 2016, at 3.

³¹ Section 3.14, from CSARC's PI-588 survey form, submitted August 19, 2016.

³² Petition dated August 19, 2016, at 9.

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(b) (4) Calumet (b) (4) ³³ CSARC
 stated that it's (b) (4)
³⁴ CSARC stated that Calumet's (b) (4)
³⁵

CSARC recognized (b) (4)

(b) (4)
³⁶

C. CSAR's Financial Condition

This section summarizes the significant facts related to CSAR's financial history and current situation, as described by CSARC in its petition.

Table 4 below summarizes data from attachments and a supplement to CSARC's petition, showing current assets, short-term debt and long-term debt for 2013, 2014, 2015, and the nine months ended September 30, 2016.³⁷ Calumet (b) (4)

debt to equity ratio was presented as (b) (4) in CSARC's petition dated August 19, 2016.³⁸
⁴⁰

Table 4
 CSAR Balance Sheet Data

Date	12/31/13	12/31/14	12/31/15	9/30/16
Current Assets	(b) (4)			
Current Liabilities	(b) (4)			
Long-term Debt	(b) (4)			
Partner's Capital	(b) (4)			

³³ Petition supplement dated December 14, 2016, at 4.

³⁴ Petition supplement dated December 14, 2016, at 4.

³⁵ Petition supplement dated December 14, 2016, at 3.

³⁶ Petition supplement, email dated December 22, 2016, John Krutz, Calumet, to EPA, income statement for nine months ended September 30, 2016.

³⁷ The balance sheet data in Table 4 for the years 2013-2015 is taken from the petition dated August 19, 2016, Tab C. The balance sheet data at September 30, 2016, is taken from an emailed petition supplement dated December 22, 2016.

³⁸ Petition dated August 19, 2016, at 2.

³⁹ According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

⁴⁰ Section 3.10, Form PI-588, submitted as part of the petition on August 19, 2016.

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CSARC is (b) (4)

⁴¹ Calumet's

(b) (4)

⁴² (b) (4)

CSARC, (b) (4)

⁴³ The Calumet (b) (4)

CSARC

(b) (4) Calumet, (b) (4)

Calumet (b) (4)

⁴⁴ Calumet's (b) (4)

Calumet (b) (4)

⁴⁵

Calumet (b) (4)

⁴⁶ (b) (4)

Calumet (b) (4)

Calumet

(b) (4) ^{47, 48} Calumet (b) (4) CSAR's (b) (4)

CSARC (b) (4)

⁴⁹

Table 5 below summarizes data from CSARC's PI-588 survey form on refining margins,⁵⁰ from CSARC's 2013, 2014 and 2015 income statements submitted as part of its petition on August 19, 2016, and from the supplemental income statement for the nine months ended September 30, 2016, submitted on December 22, 2016.⁵¹

⁴¹ Petition supplement dated December 14, 2016, at 3.

⁴² Petition supplement dated December 14, 2016, at 3.

⁴³ Petition supplement dated December 14, 2016, at 3.

⁴⁴ Calumet's (b) (4)

, petition supplement dated December 14, 2016, at 3.

⁴⁵ Petition supplement dated December 14, 2016, at 3.

⁴⁶ Petition dated August 19, 2016, at 2.

⁴⁷ Petition dated August 19, 2016, at 2.

⁴⁸ Petition supplement dated December 14, 2016, at 2.

⁴⁹ Petition supplement dated December 14, 2016, at 2.

⁵⁰ Gross refining margin is a measure of a refinery's profitability typically calculated by summing total product revenue, then subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges. DOE provided average industry gross and net margins for years 2013-2015.

⁵¹ Income statement for nine months ended September 30, 2016, petition supplement, email on December 22, 2016, John Krutz, Calumet, to EPA.

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Table 5
CSARC Net Income (Loss) and Refining Margins⁵²

Year	2013	2014	2015	Nine months ended 9/30/16
CSARC Gross refining margin, \$ per bbl	(b) (4)			
CSARC 2013-2015 average gross refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average gross refining margin, \$ per bbl ⁵³			12.32	
National nine-month 2016 average gross refining margin, \$ per bbl ⁵⁴				8.83
CSARC net refining margin, \$ per bbl	(b) (4)			
CSARC 2013-2015 average net refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average net refining margin, \$ per bbl			7.35	
National nine-month 2016 average net refining margin, \$ per bbl ⁵⁵				4.28
CSARC net income (loss) from operations, \$ million	(b) (4)			
CSARC net income (loss), \$ million	(b) (4)			

⁵² EPA used the refining margins for 2013, 2014, and 2015 as provided by CSARC in its Form PI-588 as part of the petition dated August 19, 2016. The data for the nine months ended September 30, 2016, was provided as supplemental information on December 14, 2016, at 2 and at Tab B. The national average refinery margins presented were provided by DOE to EPA from publicly available data for 2013–2015. EPA calculated the nine months ended September 30, 2016 national average refining margins from publically available data. EPA also notes that the refining margins are calculated prior to accounting for taxes, depreciation, and finance charges.

⁵³ Average three-year annual national refinery margins presented for comparison are presented for the periods 2013–2015.

⁵⁴ Data for 2016 is nine months ended September 30, 2016.

⁵⁵ Data for 2016 is nine months ended September 30, 2016.

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CSAR (b) (4) Calumet is rated Caa1 by Moody's Investor Service (speculative and high credit risk) and B- by Standard and Poor's Financial Services LLC (highly speculative).⁵⁶ On October 18, 2016, Calumet's Standard and Poor's rating outlook was changed from B- Stable to B- Negative, (b) (4)
⁵⁷ CSARC believes that (b)(4) (b) (4)

58

CSARC did not provide EPA with a statement of cash flows for 2016.⁵⁹

CSARC's petition states: (b) (4)

.⁶⁰ The petition supplement further states: (b) (4)

⁶¹ CSARC's

petition states that: (b) (4)

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IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for CSAR if EPA determines that the refinery would experience "disproportionate economic hardship" in complying with the RFS program. This section provides the analysis and rationale for our granting CSARC's petition to extend the small refinery exemption for CSAR.

A. DOE's Evaluation of CSAR

EPA asked DOE to evaluate whether CSAR will experience "disproportionate economic hardship" in complying with its RFS obligations. EPA provided DOE all of the information described in Section III above. Table 6 below summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

⁵⁶ Petition supplement dated December 14, 2016, at 3.

⁵⁷ Petition supplement dated December 14, 2016, at 3.

⁵⁸ Petition supplement dated December 14, 2016, at 3.

⁵⁹ Petition supplement dated December 14, 2016, at 2.

⁶⁰ Petition dated August 19, 2016, at 16.

⁶¹ Petition supplement dated December 14, 2016, at 4–5.

⁶² Petition dated August 19, 2016, at 16.

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Table 6⁶³
DOE Evaluation of CSARC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4) 64
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁶⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b)(4)
b Renewable fuel blending (% of production)		(b)(4)
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact	(b)(4)

⁶³ The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

⁶⁴ In its petition, CSARC states CSAR(b) (4)

Petition dated August 19, 2016, at 5. EPA notes that DOE scored this metric to reflect CSAR's (b) (4)

We note that the score on this metric is not determinative of CSAR's score on this part of the matrix or determinative of DOE's overall recommendation.

⁶⁵ DOE has provided refining industry gross margins and net margins for 2013 through 2015, and EPA has calculated the refining industry gross and net margins for the nine months ended September 30, 2016, based on public data. Average refinery industry gross and net margins for 2013–2015 were \$12.32/bbl and \$7.35/bbl, respectively, and for the nine months ended September 30, 2016, these were \$8.83/bbl and \$4.28/bbl, respectively (net margin only includes direct operating expenses; it does not include financial expenses such as interest, depreciation and amortization). CSAR's average gross and net refinery margins over 2013–2015 were (b) (4) and (b) (4) respectively, and (b) (4) and (b) (4) respectively, over the nine months ended September 30, 2016.

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	10 = no niche	
d RINs net revenue or cost ⁶⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b)(4)
Ranking (subtotal x 0.50)		(b)(4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b)(4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b)(4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b)(4)
Subtotal (average)		(b)(4)
Ranking (subtotal x 0.50)		(b)(4)

DOE has previously considered a refinery to experience disproportionate economic hardship if both rankings in Table 6 are equal to or greater than 1.0 (see DOE's Small Refinery Study for more detailed explanation). The first ranking (disproportionate impacts) is a combination of the disproportionate structural impact index and disproportionate economic impact index, and the second ranking is the viability index.

(b)(4) applied by DOE

(b)(4) applied by DOE

CSAR (b)(4)

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if only one of the rankings under Table 5 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."⁶⁷ (b)(4) applied

(b)(4) applied by DOE

(b)(4) applied by DOE

CSAR's (b)(4) applied by DOE

CSAR

B. EPA's Evaluation of CSAR's Hardship Petition

EPA has evaluated all of the information described in Section III., as well as DOE's analysis of CSAR, to independently determine whether CSAR will experience "disproportionate economic hardship" from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other

⁶⁶ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

⁶⁷ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that CSAR will experience “disproportionate economic hardship” from compliance with the RFS program for the year 2016.

We have considered DOE’s recommendation that we (b)(4) applied by DOE
CSAR (b)(4) applied by DOE

EPA has the responsibility for making the ultimate decision after considering DOE’s evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite—disproportionate economic hardship—involves “examining the impact of compliance costs on a refinery’s ability to maintain profitability and competitiveness—*i.e.*, viability—in the long term.”⁶⁸

We evaluate viability as an economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.” DOE Small Refinery Study at 3. DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.” *Id.* We evaluate viability in similar manner. We consider whether CSAR will remain a competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year’s financial statements, but also in the context of assessing the longer term prospects for the refinery. We also evaluate viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine whether CSAR faces a “disproportionate economic hardship” from compliance, and not merely an economic impact. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of “disproportionate economic hardship” from compliance with a small refinery’s RFS obligations. Here, we find that CSAR’s compliance with its 2016 RFS obligations will significantly impact its viability.

In the income statements CSARC provided to EPA, CSARC indicated CSAR (b) (4)
CSAR’s (b) (4)

CSAR experienced an overall (b) (4)

⁶⁸ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

⁶⁹ Income statement for 9 months ended September 30, 2016, petition supplement, email on December 22, 2016, John Krutz, Calumet, to EPA.

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(b) (4)

CSAR's estimated total 2016 RFS compliance costs are approximately (b) (4)

Because CSAR has (b) (4)

CSAR (b) (4)

⁷⁰⁷¹

CSAR's average annual gross and net refining margins over the years 2013-2015, (b) (4) respectively, were (b) (4) than national industry averages for the three-year period 2013-2015 (\$12.32/bbl gross refining margin and \$7.35/bbl net refining margin). CSAR's gross and net refining margins over the nine months ended September 30, 2016, (b) (4), were (b) (4) than national industry averages for the same period, \$8.83/bbl and \$4.28/bbl, respectively. CSAR's net refinery margins (b) (4), and the nine-month (b) (4)

⁷²

EPA recognizes that cash flow limitations may hinder the ability of a refinery to purchase RINs for RFS compliance. CSARC has stated that it (b) (4)

⁷³ CSAR did not submit a cash flow statement as part of its petition; CSAR's balance sheet for September 30, 2016, (b) (4)

⁷⁴ CSARC stated that Calumet (b) (4)

⁷⁵ (b) (4)
CSARC (b) (4)

⁷⁶

EPA recognizes that CSARC has (b) (4)

In 2016 CSARC (b) (4)

⁷⁷ CSARC is (b) (4)

⁷⁸ CSARC (b) (4)

⁷⁹

EPA recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. It is a normal practice in the refining industry for refineries to identify and implement, when possible, projects which improve the

⁷⁰ Table 5.

⁷¹ Table 3.

⁷² Table 5.

⁷³ Petition supplement dated December 14, 2016, at 2.

⁷⁴ Balance sheet at September 30, 2016, petition supplement, email on December 22, 2016, John Krutz, Calumet, to EPA.

⁷⁵ Petition supplement dated December 14, 2016, at 4.

⁷⁶ Table 5.

⁷⁷ Petition dated August 19, 2016, at 1.

⁷⁸ Petition supplement dated December 14, 2016, at 2.

⁷⁹ Petition supplement dated December 14, at 2-3.

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efficiency, reliability or safety of their refineries. The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, reduces funds available to pay for other potential projects to improve the efficiency, reliability and safety of a refinery. However, in order to show “disproportionate economic hardship,” a small refinery needs to show that it faces RFS compliance costs that would “significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure.” See DOE Small Refinery Study at 36. EPA believes this is the case for CSAR. While refining is a cyclical business, CSAR was (b) (4)

. The average 2013-2015 and first nine month 2016 net refining margins for CSAR were (b) (4), respectively; CSAR’s (b) (4) and CSAR experienced (b) (4) CSAR, but would address (b)(4) CSAR’s (b) (4)

⁸¹ EPA recognizes that CSAR’s (b) (4)

⁸² even in the absence of its RFS obligation. CSARC indicated that (b) (4) CSARC (b) (4) ⁸³

For all of these reasons, we find that CSAR has demonstrated that compliance with its 2016 RFS requirements will result in “disproportionate economic hardship.” Based on this evaluation, an extension of the small refinery temporary exemption is warranted.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery’s exemption based on a demonstration by the small refinery of a “disproportionate economic hardship” from compliance with the RFS requirements. Based on our analysis of all of the available information about CSAR, and our consultation with DOE, EPA has concluded that CSAR will experience “disproportionate economic hardship” in complying with its RFS requirements. Therefore, EPA is granting CSARC’s request for a temporary extension of CSAR’s small refinery RFS hardship exemption for 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to

⁸⁰ Table 5.

⁸¹ Petition dated August 19, 2016, at 5–7.

⁸² Petition dated August 19, 2016, at 11–12.

⁸³ Form PI-588 Sections 3.27, 3.28, filed with petition dated August 19, 2016.

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CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000126

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President, Finance
Calumet Specialty Products Partners, LP
2780 Waterfront Pkwy E Dr
Indianapolis, Indiana 46214

Subject: 2017 Renewable Fuel Standard Small Refinery Hardship Petition
Calumet San Antonio Refining, LLC
7811 S Presa Street
San Antonio, Texas 78223

Dear Mr. Krutz:

I am writing in response to the petition from Calumet San Antonio Refining, LLC ("CSARC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for CSARC's refinery in San Antonio, Texas (the "San Antonio Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The San Antonio Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CSARC submitted a petition to EPA dated October 20, 2017, to extend the exemption for the San Antonio Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of CSARC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the San Antonio Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and CSARC is not subject to the requirements of an obligated party for fuel produced at the San Antonio Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

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**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Calumet San Antonio Refining, LLC's
San Antonio, Texas Refinery**

**Contains Information Claimed by
Calumet San Antonio Refining, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Calumet San Antonio Refining, LLC (“CSARC”) dated October 20, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for CSARC’s San Antonio, Texas refinery (the “CSAR”) in 2017. For the reasons described herein, EPA is granting CSARC’s request for an extension of CSAR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) CSAR’s (b)(4)

(b)(4) applied by DOE

CSAR (b)(4) applied by DOE CSAR’s

(b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by CSAR (b)(4) applied by DOE (b)(4) EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) CSAR's (b)(4) applied by DOE CSAR (b)(4) applied by DOE (b)(4) applied by DOE (b)(4) applied by DOE CSAR (b)(4) applied by DOE (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of CSAR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)

³ From DOE recommendation for CSAR transmitted to EPA on February 27, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a	Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative (b)(4)
b	Renewable fuel blending (% of production)	
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25% (b)(4)
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche (b)(4)
d	RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost
Subtotal (average)		(b)(4)
Ranking (subtotal x 0.50)		(b)(4)
3 Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency (b)(4)
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability (b)(4)
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down (b)(4)
Subtotal (average)		(b)(4)
Ranking (subtotal x 0.50)		(b)(4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

CSARC submitted a petition to EPA on October 20, 2017, for an extension of the RFS small refinery exemption for CSAR for 2017. In support of its petition, CSARC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that CSARC believes demonstrate DEH. CSARC stated that CSAR (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization).

⁶ DOE has not scored this category for any hardship petition evaluations.

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(b) (4) ;⁷ CSARC further noted that CSAR (b) (4)
 and that CSAR (b) (4)
⁸ CSARC stated that (b) (4)
⁹ CSARC stated that CSAR (b) (4)
¹⁰ CSARC (b) (4)
¹¹

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, CSARC's petition presents financial information that documents (b) (4) along with other metrics of (b)(4)

. Based on our review of all of the available information about CSAR, and our consultation with DOE, EPA has concluded that CSAR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting CSARC's request for a temporary extension of CSAR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by that CSAR (b)(4)
 (b)(4) applied by DOE
 EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹²

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ Petition at 3.

⁸ Petition at 3.

⁹ Petition at 4.

¹⁰ Petition at 9.

¹¹ Petition supplement submitted December 5, 2017, income statement for the eight months ended August 31, 2017.

¹² *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

FEB 10 2017

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President – Finance
Calumet Specialty Products Partners, L.P.
Calumet Shreveport Fuels, LLC
3333 Midway
Shreveport, Louisiana 71109-5719

Dear Mr. Krutz:

I am writing in response to the petition from Calumet Shreveport Fuels, LLC (CSFC) for an extension of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for the Calumet Shreveport Refinery (CSF) in Shreveport, Louisiana. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. CSF qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause “disproportionate economic hardship.” Pursuant to these provisions, CSFC submitted a petition to the EPA dated July 28, 2016, to extend the exemption for CSF from January 1, 2015 through December 31, 2015, and from January 1, 2016 through December 31, 2016. The EPA granted CSFC’s exemption request for 2015 in a previous decision. The EPA is addressing CSFC’s request for 2016 in this decision.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that CSF will experience “disproportionate economic hardship” by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting CSFC’s petition for a one-year extension of CSF’s RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, CSF’s gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and CSFC is not subject to the requirements of an obligated party for fuel produced at CSF during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grundler".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Calumet Shreveport Fuels LLC's
Calumet Shreveport Refinery**

**Contains Information Claimed by
Calumet Shreveport Fuels LLC to be
Confidential Business Information**

Office of Transportation and Air Quality

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EPA received a petition from Calumet Shreveport Fuels, LLC (“CSFC”) dated July 28, 2016, for a two-year extension of the RFS small refinery exemption for the Calumet Shreveport Refinery (“CSR”), for obligation years 2015 and 2016. EPA previously granted CSFC’s request for 2015 in a separate decision document. For the reasons described herein, EPA is granting CSFC’s request for a one-year extension of CSR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In

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EPA's original implementing regulations ("RFS1"), EPA defined "small refineries" as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and

¹ EPA Act 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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were then averaged to derive a disproportionate impact index between 0 and 10. The disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the

⁶ After DOE completed their study, they discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of their RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refiner's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

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petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

CSFC submitted a petition to EPA dated July 28, 2016, for an extension of the RFS small refinery exemption for CSR for 2016.¹⁰ ¹¹ CSFC supplemented its petition with a corrected December 31, 2015 balance sheet on August 3, 2016.¹² CSFC further supplemented its petition with financial statements, RFS compliance cost information, and further discussion of CSFC's financial situation on December 28, 2016. Without an extension of its small refinery exemption, CSR would be required to comply with the RFS program beginning January 1, 2016.

In support of its petition, CSFC submitted a completed DOE survey form PI-588, which specified the factors that CSFC believes demonstrate disproportionate economic hardship.¹³ CSFC also provided a petition document with additional explanation regarding the hardship the refinery would face in complying with the RFS program, and the date(b) (4) by which it hopes compliance with the requirements can reasonably be achieved at CSR.¹⁴ CSFC also provided financial statements for the nine months ended September 30, 2016, and estimates of its RFS compliance costs in 2016,¹⁵ absent an extension of the compliance deadline. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that CSFC has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding CSR's operations, RFS compliance costs and financial condition. CSFC provided most of this information to EPA in its petition and in other supporting documents (*e.g.*, email responses to EPA staff questions, CSFC financial information). EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

¹⁰ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year's RVO.

¹¹ CSFC petitioned for, and received, an exemption from RFS compliance for CSR for 2013, 2014, and 2015.

¹² CSR balance sheet, attached to August 3, 2016 email from John Krutz to EPA.

¹³ Petition dated July 28, 2016, Tab A.

¹⁴ Petition supplement dated December 28, 2016, at 4. CSFC reported (b) (4)

¹⁵ Petition supplement dated December 28, 2016, Tab A.

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A. Summary of CSR's Operations

CSFC, a wholly owned subsidiary of Calumet Specialty Products Partners, L.P. ("Calumet"), operates a refinery in Shreveport, Louisiana (CSR). CSR qualified as a small refinery under the RFS1 and RFS2 regulations, and was exempt from the RFS standards from 2006 through 2012. EPA granted CSR one year extensions of the RFS small refinery exemption for compliance years 2013, 2014, and 2015.

The refinery consists of 17 major processing units, and converts paraffinic crude oil into gasoline, ultra-low sulfur diesel, lubricating oils, waxes, asphalt, and by-products. A list of primary processing units and approximate production rates is shown below in Table 1.

Table 1
CSR Process Information¹⁶

Processing Unit	Capacity
Crude distillation unit	60,000 bpd
Vacuum distillation unit	28,000 bpd
Naphtha hydrotreater	16,000 bpd
Naphtha reformer	12,000 bpd
Heavy gas oil hydrotreater	21,100 bpd
Hydrogen plant	12 million std cubic ft H ₂ /day
Sulfur recovery unit	40 tons sulfur/day
Estimated volume of primary liquid fuels products for the 12 months of 2016	(b) (4)
Geographic locations in which fuel will be sold	PADD 3

The refinery is located in Shreveport, Louisiana. The refinery directly employs approximately (b) (4) personnel and (b) (4) third party contractors. In addition to the production capacities listed above, the refinery has approximately (b) (4)

18

CSFC's parent, Calumet, is a limited partnership formed under the laws of the state of Delaware. In 2001, a predecessor of Calumet acquired the refinery from Pennzoil-Quaker State Company. (b) (4)

19

¹⁶ Data obtained from DOE's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

¹⁷ From RFS cost summary for 12 months of 2016 submitted as part of petition supplement dated December 28, 2016, at Tab A.

¹⁸ Petition at 2.

¹⁹ Petition 4–5.

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B. Summary of CSR's RFS Compliance Costs

CSFC provided information on its projected cost of complying with the renewable fuel standard in 2016, absent an extension of the RFS small refinery exemption. CSFC provided RFS compliance costs based on actual data for the first nine months of 2016, as well as an estimate of RFS compliance costs for the entire year of 2016. The following two tables contain these data provided by CSFC, and both are presented here to detail CSR's compliance costs for the entire year of 2016.²⁰ The cost of purchased RINs in Tables 2 and 3 below reflect market costs on December 6, 2016. This date was chosen by Calumet because (b) (4)

21,22

Table 2²³
CSR's RFS Compliance Costs for Nine Months Ended September 30, 2016

Renewable Fuel Type	2016 Standard	Nine Month 2016 Renewable Volume Obligation	Nine Month 2016 Renewable Volume Blended by CSR	Nine Month 2016 Cost of Renewable Blended by CSR	Nine Month 2016 Total Cost/ (Benefit) of Blended Renewable	Nine Month 2016 Total RINs Separated by CSR	Nine Month 2016 RIN Shortfall/ (Surplus)	Nine Month 2016 Cost of Purchased/ Carried Over RINs	Nine Month 2016 Total Cost of Purchased/ Sold RINs	Nine Month 2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol equivalent	Ethanol equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.1280	(b) (4)								
Biomass-based Diesel	1.5900	(b) (4)								
Advanced Biofuel	2.0100	(b) (4)								
Renewable Fuel	10.1000				(b) (4)					
Total Cost					(b) (4)					

²⁰ Tables 2 and 3 use RIN prices from CSFC's petition supplement dated December 28, 2016, at Tab A.

²¹ Email communication from John Krutz, Calumet, to EPA, dated January 12, 2017.

²² EPA notes that CSFC's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016. EPA calculated average 2016 RIN prices for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/4/2016 through 12/30/2016. The average costs of RINs in 2016 for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that CSFC may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016. EPA also notes that D6 RINs were trading at \$0.44/RIN on February 2, 2017, using public data from p Fuels Limited,

http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfldaily.pdf

²³ Table 2 is an RFS cost summary for the first nine months of 2016 using actual cost data. This summary uses gasoline and diesel production levels of (b) (4), respectively, petition supplement dated December 28, 2016, at Tab A.

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Table 3
CSR's Projected RFS Compliance Costs for 2016²⁴

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by CSR	2016 Cost of Renewable Blended by CSR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by CSR	2016 RIN Shortfall/ (Surplus)	2016 Cost of Purchased/ Carried Over RINs	2016 Total Cost of Purchased/ Sold RINs	2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol equivalent	Ethanol equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.1280	(b) (4)								
Biomass-based Diesel	1.5900	(b) (4)								
Advanced Biofuel	2.0100	(b) (4)								
Renewable Fuel	10.1000				(b) (4)					
Total Cost					(b) (4)					

CSFC (b) (4)

²⁵ (b) (4)

CSFC (b) (4)

²⁶ CSR (b) (4)

²⁷

(b) (4)

CSFC (b) (4)

²⁸ (b) (4)

CSFC (b) (4)

²⁹ (b) (4)

CSR's (b) (4)

CSR (b) (4)

³⁰ During 2016 Calumet (b) (4)

³¹

²⁴ Table 3 is an RFS compliance cost estimate for the twelve months of 2016, petition supplement dated December 28, 2016, at 1. This projection uses gasoline and diesel production levels of (b) (4) respectively, petition supplement dated December 28, 2016, Tab A.

²⁵ Petition at 5.

²⁶ Petition supplement dated December 28, 2016, Tab A, page 2.

²⁷ Petition at 5–6.

²⁸ Petition at 6.

²⁹ Petition supplement dated December 28, 2016, at 2.

³⁰ Petition at 6.

³¹ Petition at 6.

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Because of Calumet's ³² (b) (4), CSFC (b) (4)

Calumet (b) (4)

, Calumet (b) (4)
CSFC believes (b) (4)

CSR (b) (4)

³³ CSR's (b) (4)

³⁴ (b) (4)
CSR (b) (4)

³⁵

C. CSR's Financial Condition

This section summarizes the significant facts related to CSR's financial history and current situation, as described by CSFC in its petition and supplemental information.

Calumet is (b) (4)

³⁶ Table 4

below summarizes data from CSR's 2013 and 2014 balance sheets submitted with the original petition on July 28, 2016.³⁷ The 2015 balance sheet information was submitted as a supplement to the petition on August 3, 2016.³⁸ The balance sheet for December 31, 2015 includes (b) (4)

³⁹ The balance sheet data for the nine months ended September 30, 2016, was submitted as a supplement to the petition on December 28, 2016.⁴⁰

³² Petition 3–4.

³³ Petition at 9–10.

³⁴ Petition supplement dated December 28, 2016, at Tab B.

³⁵ Petition supplement dated December 28, 2016, at 2.

³⁶ Petition at 2.

³⁷ Petition at Tab C.

³⁸ Shreveport Balance Sheet at December 31, 2015, attached to August 3, 2016 email from John Krutz, Calumet, to EPA.

³⁹ Compare Shreveport Balance Sheet at December 31, 2015, attached to August 3, 2016 email from John Krutz, Calumet, to EPA, Petition at Tab C.

⁴⁰ Supplement to CSFC RFS small refinery exemption petition for 2016, Tab C, dated December 28, 2016, and Shreveport Balance Sheet at December 31, 2015 submitted August 3, 2016.

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Table 4
CSR Balance Sheet Data (\$ in millions)

Date	12/31/13	12/31/14	12/31/15	9/30/16
Current assets	(b) (4)			
Current liabilities	(b) (4)			
Long-term liabilities	(b) (4)			
Partner's capital	(b) (4)			

CSR's debt to equity ratio was presented as (b) (4) in CSFC's petition dated July 28, 2016.^{41 42}

CSFC is (b) (4)

CSFC (b) (4)

(b) (4)

Calumet and CSFC (b) (4)
⁴³

(b) (4)

CSFC (b) (4) Calumet (b) (4) (b) (4)

CSFC,
⁴⁴

Calumet (b) (4)

Calumet's (b) (4)

alumet (b) (4)

CSR (b) (4)

⁴⁵

Table 5 below summarizes data on refining margins at the Shreveport, LA Refinery,⁴⁶ and from the refinery's income statements provided by CSFC.

⁴¹ According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

⁴² Page 2, Section 3.10, DOE Form PI-588, submitted by Petitioner July 28, 2016.

⁴³ Petition at 3.

⁴⁴ Calumet's (b) (4)

⁴⁵ Petition supplement dated December 28, 2016, at 3.

⁴⁶ Gross refining margin is a measure of a refinery's profitability typically calculated by summing total product revenue, then subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

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Table 5
CSR Net Income (Loss) and Refining Margins⁴⁷

Year	2013	2014	2015	Nine months ended 9/30/16
CSFC gross refining margin, \$ per bbl	(b) (4)			
CSFC 2013-2015 average gross refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average gross refining margin, \$ per bbl ⁴⁸			12.32	
National nine-month 2016 average gross refining margin, \$ per bbl ⁴⁹				8.83
CSFC net refining margin, \$ per bbl	(b) (4)			
CSFC 2013-2015 average net refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average net refining margin, \$ per bbl			7.35	
National nine-month 2016 average net refining margin, \$ per bbl ⁵⁰				4.28
CSFC operating income (loss), \$ million	(b) (4)			
CSFC net income (loss), \$ million	(b) (4)			

CSR (b) (4), but Calumet was rated Caa1 by Moody's Investor Service (speculative and high credit risk) and B- by Standard and Poor's Financial Services LLC (highly speculative).⁵¹ On October 18, 2016, Calumet's Standard and Poor's rating outlook was changed from B- Stable to B- Negative, (b) (4)

⁵² CSFC stated that (b) (4)

⁴⁷ EPA used the refining margins for years 2013–2015 as provided by CSFC in its Form PI-588 submitted with the petition on July 28, 2016. The refinery margins for the nine months ended September 30, 2016, were provided by CSFC as supplemental information on December 28, 2016, at Tab B. The national average refinery margins for 2013–2015 presented for comparison were provided to EPA by DOE from publically available data. EPA calculated the nine months ended September 30, 2016 national average refining margins from publically available data. EPA also notes that the refining margins are calculated prior to accounting for taxes, depreciation, and finance charges.

⁴⁸ Average three-year annual national refinery margins presented for comparison are presented for the periods 2013-2015.

⁴⁹ Nine months ended September 30, 2016.

⁵⁰ Nine months ended September 30, 2016.

⁵¹ Petition at 3.

⁵² Petition supplement dated December 28, 2016, at 3.

CSFC believes tha (b) (4)

55

CSFC did not provide EPA with a statement of cash flows for 2016.

CSFC's petition states:

(b) (4)

CSFC's supplement concludes: "(b) (4)

”55

IV. Application of the Criteria for Hardship Relief

EPA may extend the temporary RFS exemption for CSR if EPA determines that the refinery would experience disproportionate economic hardship in complying with the RFS program. This section provides the analysis and rationale for our granting CSFC's petition to extend the small refinery exemption for CSR.

A. DOE's Evaluation of CSR

EPA asked DOE to evaluate whether CSR will experience “disproportionate economic hardship” in complying with its RFS requirements. EPA provided DOE all of the information described in Section III above. Table 5 below summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

⁵³ Petition supplement dated December 28, 2016, at 3.

⁵⁴ Petition at 13.

⁵⁵ Petition supplement dated December 28, 2016, at 4.

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Table 5⁵⁶
DOE Evaluation of CSFC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	■
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	■
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	■
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	■
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	■
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵⁸	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	■
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	■
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	

⁵⁶ The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

⁵⁷ (b) (4)

Petition at 4–5, and footnote 19 above. EPA notes that DOE scored (b)(4) applied by DOE

We note that the score on this metric is not determinative of CSR's score on this part of the matrix or determinative of DOE's overall recommendation.

⁵⁸ DOE has provided refining industry gross margins and net margins for 2013 through 2015, and EPA has calculated the refining industry gross and net margins for the nine months ended September 30, 2016, based on public data. Average industry gross and net margins for 2013–2015 were \$12.32/bbl and \$7.35/bbl, respectively, and for the nine months ended September 30, 2016, these were \$8.83/bbl and \$4.28/bbl, respectively (net margin only includes direct operating expenses; it does not include financial expenses such as interest, and depreciation and amortization). CSR's average gross and net refinery margins over 2013–2015 were (b) (4), respectively and (b) (4), respectively, over the nine months ended September 30, 2016.

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c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d	RINs net revenue or cost ⁵⁹	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)			
Ranking (subtotal x 0.50)			
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	
Subtotal (average)			
Ranking (subtotal x 0.50)			

DOE has previously considered a refinery to experience disproportionate economic hardship if both rankings in Table 5 are equal to or greater than 1.0 (see DOE's Small Refinery Study for more detailed explanation). The first ranking (disproportionate impacts) is a combination of the disproportionate structural impact index and disproportionate economic impact index, and the second ranking is the viability index.

(b)(4) applied by DOE

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if only one of the rankings under Table 5 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."⁶⁰ (b)(4) applied by DOE

B. EPA's Evaluation of CSFC's Hardship Petition

EPA has evaluated all of the information described in Section III., as well as DOE's analysis of CSR, to independently determine whether CSR will experience "disproportionate economic hardship" from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other

⁵⁹ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

⁶⁰ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that CSR will experience “disproportionate economic hardship” from compliance with the RFS program for the year 2016.

We have considered (b)(4) applied by DOE

PA has the responsibility for making the ultimate decision after considering DOE’s evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite—disproportionate economic hardship—involves “examining the impact of compliance costs on a refinery’s ability to maintain profitability and competitiveness—*i.e.*, viability—in the long term.”⁶¹

We evaluate viability as an economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.” DOE Small Refinery Study at 3. DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.” *Id.* We evaluate viability in a similar manner. We consider whether CSR will remain a competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year’s financial statements, but also in the context of assessing the longer term prospects for the refinery. We also evaluate viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine whether CSR faces a “disproportionate economic hardship” from compliance, and not merely an economic *impact*. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of “disproportionate hardship” from compliance with a small refinery’s RFS obligations. Here, we find that CSR’s compliance with its 2016 RFS requirements will significantly impact its viability.

In the income statements CSFC provided to EPA, CSFC indicated CSR(b) (4)
(see Table 5 in Section III.C. above). CSR’s
(b) (4)

⁶² The CSR (b) (4)

⁶¹ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

⁶² Petition supplement dated December 28, 2016, at 2.

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(b) (4) .⁶³ CSR's estimated 2016 total RFS compliance costs are approximately
 (b) (4) (see Table 3 in Section III.B.). (b) (4)
 and CSR's (b) (4)
 CSR (b) (4)

CSR's average annual gross and net refining margins over the years 2013-2015
 (b) (4) than industry averages for the same
 three-year period (\$12.32/bbl gross refining margin and \$7.35/bbl net refining margin).
 CSR's gross refining margin over the nine months ended September 30, 2016,
 (b) (4) than the national industry average for the same period, \$8.83/bbl;
 (b) (4) CSR's net refining margin over the nine months ended September 30, 2016,
 (b) (4) than the national industry average for the same period, \$4.28/bbl.
 CSR's (b) (4)

EPA recognizes that cash flow limitations may hinder the ability of a refinery to purchase
 RINs for RFS compliance. CSFC has stated that it (b) (4)

.⁶⁴ CSFC did not submit a cash flow statement as part of
 this petition; CSR's balance sheet for the nine months ended September 30, 2016, (b) (4)
 Calumet (b) (4)

.⁶⁵ (b) (4) , CSR (b) (4)
 Calumet (b) (4)

Calumet.⁶⁶ CSFC states that Calumet is (b) (4)

Calumet's (b) (4) .⁶⁷ EPA recognizes that (b) (4)
 CSR and Calumet (b) (4) Calumet^{(b) (4)}

EPA recognizes that the cost of complying with the RFS program has a varying impact
 on efficiency gains for different refineries. It is a normal practice in the refining industry
 for refineries to identify and implement, when possible, projects which improve the
 efficiency, reliability or safety of their refineries. The cost of RFS compliance, either
 through purchasing and blending renewable fuels or purchasing RINs, or a combination
 of both, reduces funds available to pay for other potential projects to improve the
 efficiency, reliability and safety of a refinery. CSFC (b) (4)

that (b) (4) CSFC stated

⁶³ Table 5.

⁶⁴ Petition supplement dated December 28, 2016, at 2.

⁶⁵ Petition at 10.

⁶⁶ Petition at 3.

⁶⁷ Petition supplement dated December 28, 2016, at 3.

(b) (4)

.⁶⁸ EPA recognizes that the (b) (4)

EPA also recognizes the effect of the RFS compliance costs detailed in Table 3 on the ability of a struggling refinery to make the investments needed to become and remain a viable business.

In order to show “disproportionate economic hardship,” a small refinery needs to show that it faces RFS compliance costs that would “significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure.” *See* DOE Small Refinery Study at 36. EPA believes this is the case for CSR. CSR is a small refinery, (b) (4).

While refining is a cyclical business, CSR (b) (4)

CSR’s net refining margin for the first nine months of 2016 (b) (4)

the nine-month 2016 national average presented in Table 5. CSR (b) (4)

CSR’s (b) (4)

.⁶⁹ EPA further recognizes Calumet’s (b) (4)

that CSR’s (b) (4)

For all of these reasons, we find that CSR has demonstrated that compliance with its 2016 RFS requirements will result in “disproportionate economic hardship.” Based on this evaluation, an extension of the small refinery temporary exemption is warranted.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery’s exemption based on a demonstration by the small refinery of a “disproportionate economic hardship” from compliance with the RFS requirements. Based on our analysis of all of the available information about CSR, and our consultation with DOE, EPA has concluded that CSR will experience “disproportionate economic hardship” in complying with the RFS requirements. Therefore, EPA is granting CSFC’s request for a temporary extension of CSR’s small refinery hardship exemption for 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁶⁸ Petition at 12.

⁶⁹ Petition supplement dated December 28, 2016, at 2.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000154

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President, Finance
Calumet Specialty Products Partners, LP
2780 Waterfront Pkwy E Dr
Indianapolis, Indiana 46214

Subject: 2017 Renewable Fuel Standard Small Refinery Hardship Petition
Calumet Shreveport Refining, LLC
3333 Midway
Shreveport, Louisiana 71109-5719

Dear Mr. Krutz:

I am writing in response to the petition from Calumet Shreveport Refining, LLC ("CSRC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for CSRC's refinery in Shreveport, Louisiana (the "Shreveport Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Shreveport Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CSRC submitted a petition to EPA dated September 29, 2017, to extend the exemption for the Shreveport Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of CSRC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Shreveport Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and CSRC is not subject to the requirements of an obligated party for fuel produced at the Shreveport Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grundler", with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

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**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Calumet Shreveport Refining, LLC's
Shreveport, Louisiana Refinery**

**Contains Information Claimed by
Calumet Shreveport Refining, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Calumet Shreveport Refining, LLC (“CSRC”) dated September 29, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for CSRC’s Shreveport, Louisiana refinery (“CSR”) in 2017. For the reasons described herein, EPA is granting CSRC’s request for an extension of CSR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE

EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE

Therefore (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of CSR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	■
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	■
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	■
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	■
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	■

³ From DOE recommendation for CSR transmitted to EPA on February 27, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	■
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	■
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	■
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		■
Ranking (subtotal x 0.50)		■
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	■
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	■
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	■
Subtotal (average)		■
Ranking (subtotal x 0.50)		■

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

CSRC submitted a petition to EPA on September 29, 2017, for an extension of the RFS small refinery exemption for CSR for 2017. In support of its petition, CSRC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that CSRC believes demonstrate DEH. CSRC stated that CSR (b) (4)

; ⁷ CSRC

(b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization).

⁶ DOE has not scored this category for any hardship petition evaluations.

⁷ Petition at 3.

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(b) (4)

.⁸ CSRC stated that

(b) (4)

⁹ CSRC reported (b) (4)
10

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, CSRC's petition presents financial information that documents (b) (4) along with other metrics of (b)(4)

. Based on our review of all the available information about CSR, and our consultation with DOE, EPA has concluded that CSR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting CSRC's request for a temporary extension of CSR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied that (b)(4) applied by DOE

(b)(4) EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁸ Petition at 2, 3.

⁹ Petition at 11.

¹⁰ Petition supplement dated December 5, 2017.

¹¹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 2017

(b) (4)

OFFICE OF
AIR AND RADIATION

Dear (b) (4)

I am writing in response to the petition from (b) (4)

(b) (4) for a one-year extension of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for the Company's refinery in (b) (4)

(b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated August 31, 2016, along with supplemental materials dated December 30, 2016, to extend the exemption for the (b) (4) from January 1, 2016 through December 31, 2016. (b) (4) The EPA is addressing

(b) (4) exemption request for 2016 in this decision.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that (b) (4) will experience "disproportionate economic hardship" at the (b) (4) by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting (b) (4) petition for a one-year extension of the RFS small refinery temporary exemption for the refinery. This means that from January 1, 2016 through December 31, 2016, (b) (4) gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,


Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
(b) (4)**

**Contains Information Claimed by
(b) (4)
to be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated August 31, 2016, for a (b) (4) of the RFS small refinery exemption for (b) (4) (b) (4) 2016. EPA also received additional information for the 2016 request for exemption on December 30, 2016, which included financial information through Q3 2016. (b) (4) (b) (4) (b) (4) For the reasons described herein, EPA is granting (b) (4) request for an extension of the RFS small refinery exemption for the (b) (4) for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA’s regulations implementing the EISA amendments (“RFS2”), EPA amended the definition of small refinery to

include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose “disproportionate economic hardship” on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that “disproportionate economic hardship” exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a “disproportionate economic hardship,” provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience “disproportionate economic hardship” from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and summarizes DOE’s revised approach to evaluating when “disproportionate economic hardship” may exist.³

¹ EPA Act 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² “Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE’s hardship evaluation process and its conclusions is available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

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On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPAAct 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.
- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to reopen the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).⁵

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries' blendstock, resulting in little or no net cost of compliance for the refinery. *See* Dallas Burkholder, "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 FR 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impact index between 0 and 10. The disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

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In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country's economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm's competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refinery's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how “other economic factors” may cause a small refinery to experience “disproportionate economic hardship” if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

(b) (4) submitted a petition to EPA dated August 31, 2016, for an extension of the RFS small refinery exemption for the (b) (4) for 2016.¹⁰ (b) (4) also submitted a supplement to its petition dated December 30, 2016. Without an extension of its small refinery exemption, (b) (4) would be required to comply with the RFS program beginning January 1, 2016.

In support of its petition, (b) (4) provided a petition document with a completed DOE survey form PI-588, financial statements, and additional explanation and arguments regarding the hardship the refinery would face in complying with the RFS program. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that (b) (4) has submitted the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding (b) (4) operations, RFS compliance costs and financial condition. (b) (4) provided most

¹⁰ (b) (4)

(b) (4)

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of this information to EPA in its petition and supporting documents. EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of (b) (4) Operations

(b) (4) is located in (b) (4) . (b) (4)

Production information for (b) (4) is shown in Table 1.

(b) (4) Table 1
Process Information

Processing Unit	Volume
Crude distillation unit capacity ¹⁵	(b) (4)
Volume of primary liquid products in 2016 ¹⁶	(b) (4)
Geographic locations in which fuel will be sold	(b) (4) ¹⁷

The (b) (4) crude oil throughput capacity is about (b) (4) but its production for the last several years has been (b) (4)

¹⁸(b) (4) states that the refinery has (b) (4)

(b) (4) petition

cites (b) (4)

¹⁹

(b) (4) states that because of its (b) (4)

²⁰(b) (4) states

¹¹ (b) (4) Petition, at 2.

¹² (b) (4) Petition, at 2.

¹³ (b) (4) Petition, at 2.

¹⁴ (b) (4) Petition, at 2.

¹⁵ DOE Refinery Capacity Report, January 1, 2016.

¹⁶ (b) (4) Petition, at Tab B.

¹⁷ (b) (4) is one of several Petroleum Administration for Defense Districts (PADDs), which are geographic regions used for analysis of petroleum product supply and movements.

¹⁸ (b) (4) Petition, at 2.

¹⁹ (b) (4) Petition, at 6.

²⁰ (b) (4) Petition, at 2.

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that the (b) (4)

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B. Summary of (b) (4) RFS Compliance Costs

(b) (4) provided information on its projected costs of complying with the renewable fuel standards in 2016, absent an extension of its RFS small refinery exemption. (b) (4) states that (b) (4) would need to acquire approximately (b) (4) RINs for 2016 at an estimated cost of (b) (4).²² (b) (4) estimated a total RFS compliance cost of (b) (4) for 2016.²³ At EPA's request, (b) (4) provided EPA with the following information regarding its RFS compliance costs in 2016.

Table 2
(b) (4) Estimated RFS Compliance Costs in 2016

renewable fuel type	2016 standard	2016 renewable volume obligation	Renewable volume blended by (b) (4)	Cost of renewable blended by (b) (4)	Total cost of blended renewable fuel	Total RINs separated or carried over by (b) (4)	RIN shortfall	Cost of purchased RINs	Total cost of purchased RINs	Total RFS cost
	%	gallons	gallons	\$/gallon	\$			\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)								
biomass-based diesel	1.590	3(b) (4)								
advanced biofuel	2.010	(b) (4)								
renewable fuel	10.100	(b) (4)								
Total cost					(b) (4)					

C. (b) (4) Financial Condition

Table 3 summarizes data from (b) (4) balance sheets showing (b) (4) cash, short-term debt and long-term debt through Q3 2016. (b) (4) debt to equity ratio is (b) (4).²⁴

Table 3
(b) (4) Balance Sheet Data

	6/30/14	6/30/15	12/31/15 ²⁵	9/30/16 ²⁶
Cash and cash equivalents	(b) (4)			
Short-term debt (current liabilities)	(b) (4)			
Long-term debt (noncurrent liabilities)	(b) (4)			

²¹ (b) (4) Petition, at 5.

²² See Updated RFS Compliance Cost Table, (b) (4) Petition Supplement dated December 30, 2016, Tab B.

²³ See Updated RFS Compliance Cost Table, (b) (4) Petition Supplement dated December 30, 2016, Tab B.

²⁴ (b) (4) Petition, Tab A (DOE PI-588 Survey Form), at 3.10. According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

²⁵ (b) (4) switched its reporting year from fiscal years (b) (4) to calendar years in 2015.

²⁶ (b) (4) Petition Supplement, at A.

As shown in Table 3,(b) (4)

(b) (4)²⁷

(b) (4) states that it (b) (4)

(b) (4) . (b) (4) states that it has (b) (4)

³⁰(b) (4) states that the (b) (4)

¹ For example, (b) (4) states that these conditions (b) (4)

.³²

Table 4 summarizes data from (b) (4) PI-588 survey form for (b) (4) refining margins from 2013 through 2015, and reported data for Q3 2016. (b) (4) three-year average gross refining margin for 2013-2015 was (b) (4) the three-year industry average of \$12.30/barrel. (b) (4) three-year average net refining margin for 2013-2015 was (b) (4) the three-year industry average of \$7.45/barrel.³³

²⁷ (b) (4) Petition, at 3.

²⁸ (b) (4) Petition, at 3–4.

²⁹ (b) (4) Petition, at 3–4, 7.

³⁰ (b) (4) Petition, at 4.

³¹ (b) (4) Petition, at 5.

³² (b) (4) Petition, at 5.

³³ (b) (4) Petition, at 5.

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Table 4
(b) (4) Refining Margins Data³⁴

	2013	2014	2015	2016 (Q3)
Gross refining margin ³⁵ , \$ per bbl	(b) (4)			
Net refining margin ³⁷ , \$ per bbl	(b) (4)			

(b) (4) also provided income statements for 2014-2015 (“Statement of Operations and Changes in Members’ Equity”) and an unaudited income statement for nine months ending September 30, 2016. Table 5 contains data taken from these statements.

Table 5
(b) (4) Statement of Operations

	6/30/14	6/30/15	12/31/15 ³⁸	09/30/16
Sales	(b) (4)			
Cost of Products Sold	(b) (4)			
Direct Operating Expense	(b) (4)			
Selling, General and Admin Expenses	(b) (4)			
Depreciation and Amortization	(b) (4)			
Operating Income (Loss)	(b) (4)			
Interest expense and financing costs	(b) (4)			
Non-recurring expense				\$1,470,969
Other Expense	(b) (4)			
Net Income (Loss)	(b) (4)			

As shown in Table 5, (b) (4) has a (b) (4) in 2016 through Q3.

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for (b) (4) if EPA determines that the refinery would experience “disproportionate economic hardship” in complying with the RFS program. This section provides the analysis and rationale for our grant of (b) (4) petition to extend the small refinery exemption for (b) (4)

³⁴ Gross refining margin is a measure of a refinery’s profitability. It is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel, electricity, labor, and routine maintenance expenses from the gross margin, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation, and finance charges. Refining industry gross margins and net margins were calculated based on public data.

³⁵ (b) (4) Petition, Tab A at 3.6

³⁶ 2016 Q3 numbers from email from (b) (4) counsel dated January 9, 2017.

³⁷ (b) (4) Petition, at 5.

³⁸ (b) (4) switched its reporting year from fiscal years (b) (4) to calendar years in 2015.

A. DOE's Evaluation of the (b) (4)

EPA asked DOE to evaluate whether the (b) (4) will experience “disproportionate economic hardship” in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Table 6 summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

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Table 6³⁹
DOE Evaluation of (b) (4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating) 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	
b Other business lines besides refining and marketing	0 = Other Lines 10 = No Other Lines	
c Local market acceptance of Renewables	0 = Products accepted 10 = Product not accepted	
i E10	0 = High acceptance 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg. < 40%. 10 = D/(G+D) > 40%	
e Subject to exceptional state regulations	0 = not subject 5 = Some barriers for compliance 10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁴⁰	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d RINs net revenue or cost ⁴¹	0 = revenue > cost 10 = revenue < cost	
Subtotal (average)		
Ranking (subtotal x 0.50)		
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency 5 = moderate impact 10 = impact on efficiency	
b Individual special events	0 = no special event 5 = moderate event 10 = special event impacting viability	
c Compliance costs likely to lead to shut down	0 = not likely to shut down 10 = likely to shut down	
Subtotal (average)		
Ranking (subtotal x 0.50)		

³⁹ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to

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DOE has previously considered a refinery to experience “disproportionate economic hardship” if both rankings in Table 6 are equal to or greater than 1 (see DOE’s Small Refinery Study for more explanation). The first ranking (disproportionate impacts) is a combination of the disproportionate structural impact index and the disproportionate economic impact index, and the second ranking is the viability index (b)(4) applied by DOE

(b)(4) (b)(4) applied by DOE

It should be noted that DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a “50% waiver” of a small refinery’s RFS requirements if either of the rankings under Table 6 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”⁴² (b)(4), applied by DOE (b)(4), applied by DOE

(b)(4) (b)(4), applied by DOE

B. EPA’s Evaluation of (b)(4) Hardship Petition for 2016

EPA evaluated all of the information described in Section III, as well as DOE’s analysis of (b)(4) to independently determine whether the (b)(4) will experience “disproportionate economic hardship” from compliance with its RFS requirements for 2016. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that (b)(4) will experience “disproportionate economic hardship” from compliance with the RFS program for 2016.

We have considered (b)(4) applied by DOE
(b)(4) (b)(4) applied by DOE

(b)(4) EPA has the responsibility for making the ultimate decision after considering DOE’s evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite— disproportionate economic hardship—

assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE’s explanation regarding why it does not assign scores for the gray- shaded categories.

⁴⁰ DOE calculates the average industry gross and net margins for the three-year period 2013-15, which were \$12.30/bbl and \$7.45/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). As provided in Table 4, (b)(4) average gross margin and net margin for 2013-2015 were (b)(4) and (b)(4), respectively. DOE only compares the net refining margins when scoring this metric.

⁴¹ DOE has not scored this category for any hardship petition evaluations.

⁴² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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involves “examining the impact of compliance costs on a refinery’s ability to maintain profitability and competitiveness—*i.e.*, viability—in the long term.”⁴³

We evaluate viability as an economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.” DOE Small Refinery Study at 3. DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.” *Id.* at 27. EPA evaluates viability in a similar manner. We consider whether (b) (4) will remain a competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year’s financial statements, but also in the context of assessing the longer term prospects for the refinery. EPA also evaluates viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine whether (b) (4) faces a “disproportionate economic *hardship*” from compliance, and not merely an economic *impact*. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of “disproportionate economic hardship” from compliance with a small refinery’s RFS obligations. Here, we find that (b) (4) compliance with its 2016 RFS obligations will significantly impact its viability.

In the income statements (b) (4) provided to EPA, summarized in Table 5 above, (b) (4) incurred (b) (4)

margins have also been (b) (4) ⁴⁴ As shown in Table 4, (b) (4) net
While (b) (4) received (b) (4)

5

In order to show “disproportionate economic hardship,” a small refinery needs to show that it faces RFS compliance costs that would “significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure.” See DOE Small Refinery Study at 36. (b) (4)

As described above, recurring operating problems and inefficiencies plague this facility. Due to (b) (4)

Considering these conditions and the figures above, EPA believes this is the case for (b) (4) for 2016.

⁴³ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

⁴⁴ (b) (4) Petition, at 8.

⁴⁵ (b) (4) Petition, at 8.

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Finally, EPA recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. It is a normal practice in the refining industry for refineries to identify and implement, when possible, projects that improve refinery efficiency, reliability, or safety. The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, may reduce funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery, but that fact does not establish entitlement to an exemption. As discussed above, EPA believes that it is necessary to show that RFS compliance will have an impact on the refinery's ongoing future viability to be eligible for an exemption. (b) (4)

However, as described above, (b) (4) faces (b) (4)

⁴⁶ In addition, the

(b) (4)

⁴⁷ Considering the full financial picture of the (b) (4) for 2016 and prior years, EPA agrees with (b)(4) applied by DOE [REDACTED] Given (b) (4) situation, we believe that an RFS exemption for the (b) (4) is justified under the statutory requirement of a disproportionate economic hardship.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with its RFS requirements. Based on our analysis of all of the available information about (b) (4) and our consultation with DOE, EPA has concluded that (b) (4) will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements. Therefore, EPA is hereby granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁴⁶ (b) (4) Petition, at 7.

⁴⁷ (b) (4) Petition, Tab A (DOE PI-588 Survey Form), at 3.22, 3.28.



MAR 23 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4) :

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated December 29, 2017, to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grundler", with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
(b) (4)**

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated December 29, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery (the “(b) (4)” in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) the (b) (4) ’s (b)(4) (b)(4) applied by DOE

(b) (4) (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b)(4) (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) the (b)(4) (b)(4) applied by DOE

(b)(4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of (b)(4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	Refer 1
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	Refer 1
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	Ref
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	Refer 1
e Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	Ref

³ From DOE recommendation for the (b)(4) transmitted to EPA on December 29, 2017.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

Contains Material Claimed as Confidential Business Information

10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	Refer 1
b Renewable fuel blending (% of production)		Ref
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	Refer 1
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		Refer 1a
Ranking (subtotal x 0.50)		Refer 1a
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	Refer 1
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	Ref
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	Refer 1
Subtotal (average)		Refer 1a
Ranking (subtotal x 0.50)		Refer 1a

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on December 29, 2017, for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

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submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that the (b) (4) (b) (4) (b) (4) ⁷ The petition further stated that the (b) (4) (b) (4) (b) (4)

⁸

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents information (b) (4) (b) (4) petition also presents financial information that documents (b) (4) (b) (4). Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b) (4) applied by the (b) (4) (b) (4) applied by DOE and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.⁹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ (b) (4) petition at 5.

⁸ (b) (4) petition at 34, 47, and 62 (respectively).

⁹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000184

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. Pat Ward
Vice President Refining & Logistics
Countrymark Refining & Logistics, LLC
1200 Refinery Road
Mt. Vernon, Indiana 47620

Dear Mr. Ward:

I am writing in response to the petition from Countrymark Refining & Logistics, LLC ("CountryMark") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for CountryMark's refinery in Mt. Vernon, Indiana (the "Mt. Vernon Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Mt. Vernon Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CountryMark submitted a petition to EPA dated October 27, 2017, to extend the exemption for the Mt. Vernon Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of CountryMark's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Mt. Vernon Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and CountryMark is not subject to the requirements of an obligated party for fuel produced at the Mt. Vernon Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Grundler', with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

cc: Mr. Brian Thompson
Countrymark Refining & Logistics, LLC
1200 Refinery Road
Mt. Vernon, Indiana 47620

Mr. LeAnn Johnson Koch
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Countrymark Refining & Logistics, LLC's
Mt. Vernon, Indiana Refinery**

**Contains Information Claimed by
Countrymark Refining & Logistics, LLC's
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from CountryMark Refining & Logistics, LLC (“CountryMark”) dated October 27, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for CountryMark’s Mt. Vernon, Indiana refinery (the “Mt. Vernon Refinery”) in 2017. For the reasons described herein, EPA is granting CountryMark’s request for an extension of the Mt. Vernon Refinery’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) the Mt. Vernon Refinery’s (b)(4) applied by DOE

the Mt. Vernon Refinery (b)(4) applied by DOE the Mt. Vernon Refinery’s (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by the Mt. Vernon (b)(4) applied by DOE (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the Mt. Vernon Refinery (b)(4) applied by DOE (b)(4) applied by DOE Therefore, (b)(4) applied by DOE the Mt. Vernon Refinery (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of CountryMark's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance	(b)(4)

³ From DOE recommendation for CountryMark transmitted to EPA on October 27, 2017.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4) (b) (4)
Ranking (subtotal x 0.50)		(b) (4) (b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4) (b) (4)
Ranking (subtotal x 0.50)		(b) (4) (b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

CountryMark submitted a petition to EPA on October 27, 2017, for an extension of the RFS small refinery exemption for the Mt. Vernon Refinery for 2017. In support of its petition,

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Mt. Vernon Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

Contains Material Claimed as Confidential Business Information

CountryMark submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that CountryMark believes demonstrate DEH. The petition stated that the Mt. Vernon Refinery's (b) (4)

.⁷ Similarly, the Mt. Vernon Refinery's (b) (4)
⁸ Additionally, in 2017 the Mt. Vernon Refinery was (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, CountryMark's petition presents financial information that documents (b) (4)

. Based on our review of all of the available information about the Mt. Vernon Refinery, and our consultation with DOE, EPA has concluded that the Mt. Vernon Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting CountryMark's request for a temporary extension of the Mt. Vernon Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by the Mt. Vernon Refinery (b)(4) applied by DOE

EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹⁰

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ CountryMark petition at 14.

⁸ See *supra* note 5.

⁹ CountryMark petition at 20.

¹⁰ *Sinclair*, 874 F.3d at 1166; See also *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY

2565 PLYMOUTH ROAD

ANN ARBOR, MICHIGAN 48105-2498

MAY 04 2017

OFFICE OF
AIR AND RADIATION**(b) (4)**

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to the EPA dated December 30, 2016, to extend the exemption for the (b) (4) refinery for 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that (b) (4) will experience "disproportionate economic hardship" at the (b) (4) refinery by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting (b) (4) petition requesting a further extension of its RFS small refinery temporary exemption. This means that from January 1, 2016, through December 31, 2016, (b) (4) gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party under the RFS program for fuel produced at the (b) (4) refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Grundler".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program For
(b) (4)**

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from

(b)(4)

(b) (4)

(b)(4)

(b) (4)

(b) (4)

. For the reasons described herein, EPA is granting (b) (4) request for an extension of its RFS small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA’s regulations

implementing the EISA amendments (“RFS2”), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose “disproportionate economic hardship” on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that “disproportionate economic hardship” exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a “disproportionate economic hardship,” provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience “disproportionate economic hardship” from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and summarizes DOE’s revised approach to evaluating when “disproportionate economic hardship” may exist.³

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² “Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

³ Excerpt from pp. 1–3 of the DOE Small Refinery Study. A complete explanation of DOE’s hardship evaluation process and its conclusions is available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

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On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.
- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

⁴ The Senate Report (Senate Report 111-45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries' blend stock, resulting in no net cost of compliance for the refinery. See Dallas Burkholder, "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impacts index between 0 and 10. The disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of their RFS exemption.

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In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country's economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.^[8] In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.^[9] DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm's competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when "disproportionate economic hardship" exists in the context of the RFS program.

EPA considers DOE's assessment of whether a small refinery will face disproportionate impacts in complying with its RFS obligations. The DOE analysis informs EPA's finding of whether "disproportionate economic hardship" exists and in turn EPA's resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.¹⁰ In addition to the metrics DOE applies in assessing disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

(b) (4) submitted a revised 2016 petition to EPA dated December 30, 2016 (b) (4) for an extension of the RFS small refinery exemption for (b) (4) for 2016,¹¹ and a supplement to its petition on January 27, 2017 (b) (4). In support of its petition, (b) (4) submitted a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate disproportionate economic hardship. (b) (4) also provided a petition document with additional explanation regarding the hardship the refinery would face in complying with the RFS program, along with financial statements for 2013–2016. (b) (4) also provided EPA with anticipated compliance costs for RFS and an explanation of its efforts to comply with its RFS obligations. All of this information was forwarded to DOE for consideration in its analysis.

¹⁰ EPA also considers DOE's analysis of a small refinery's viability, which DOE assesses as the second component of "disproportionate economic hardship." DOE Small Refinery Study at 3 ("Disproportionate economic hardship must encompass two broad components...and an effect sufficient to cause a significant impairment of the refinery operations."); DOE Small Refinery Study at 27, 36 ("Refiner viability refers to the ability of the refiners to remain competitive and profitable."). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on "viability," but we are changing our approach. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship, compliance with RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery's operations are not significantly impaired.

¹¹ (b) (4) did not receive an exemption from its RFS obligations for 2011 through 2015.

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EPA finds that ^{(b) (4)} has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding ^{(b) (4)} operations, RFS compliance costs, and financial condition. ^{(b) (4)} provided most of this information to EPA in its petition and in other supporting documents (e.g., ^{(b) (4)} financial information, RFS compliance cost estimates). EPA obtained the remaining information from public sources and from DOE (e.g., average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of ^{(b) (4)} Operations

^{(b) (4)} refinery is located in ^{(b) (4)}. ^{(b) (4)} is owned by ^{(b) (4)}

^{(b) (4)} qualified as a small refinery under both the RFS1 and RFS2 regulations, and was exempted from the RFS standards from 2006 through 2010. ^{(b) (4)} maximum crude capacity is ^{(b) (4)}. ^{(b) (4)} processes ^{(b) (4)}. ^{(b) (4)} does not produce ^{(b) (4)}. A list of typical production rates is shown below in Table 1.

Table 1
^{(b) (4)} Process Information

Processing Unit	Volume
Crude distillation unit capacity	^{(b) (4)}
Volume of transportation fuel produced in 2016 ¹³	^{(b) (4)}
Geographic locations in which fuel will be sold	^{(b) (4)}

^{(b) (4)} sells all of its diesel fuel to another ^{(b) (4)} company ^{(b) (4)}

¹⁰ ^{(b) (4)}

¹¹

¹² ^{(b) (4)} Petition at 2.

¹³ As noted earlier, ^{(b) (4)} is ^{(b) (4)}

¹⁴ ^{(b) (4)} Petition Tab E.

¹⁵ ^{(b) (4)} is one of several Petroleum Administration for Defense Districts (PADDs), which are geographic regions used for analysis of petroleum product supply and movements.

¹⁶ ^{(b) (4)} Petition at 3–4.

¹⁷ ^{(b) (4)} Petition at 3.

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(b) (4)

19 (b) (4)

20 (b) (4)

21

B. Summary of (b) (4) RFS Compliance Costs

(b) (4) provided EPA with the following information regarding (b) (4) RFS compliance costs in 2016, showing a total RFS compliance cost of (b) (4) for 2016.²²

Table 2
RFS Compliance Costs in 2016 for (b) (4)

renewable fuel type	2016 standard	2016 RVO	2016 renewable volume blended	2016 cost of blended renewable	2016 total blended renewable fuel cost	2016 RINs separated EtOH-equiv	Carryover RINS from 2015	2016 RIN shortfall EtOH-equiv	2016 purchased RIN cost ²³	2016 total purchased RIN cost	2016 total RFS cost
	%	gallons	gallons	\$/gallon	\$				\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)									
biomass-based diesel	1.590	(b) (4)									
advanced biofuel	2.010	(b) (4)									
renewable fuel	10.100	(b) (4)									
total cost					(b) (4)						

C. (b) (4) Financial Condition

As described in Section III.A, (b) (4) is owned by (b) (4). Table 3 summarizes data from (b) (4) condensed balance sheets showing (b) (4) cash, short-term debt, long-term debt, and debt-to-equity ratios for 2013-2016.²⁴

¹⁸ (b) (4) Petition Tab A at 4.6.

¹⁹ (b) (4) Petition at 5.

²⁰ (b) (4) Petition at 4-5.

²¹ (b) (4) Petition Tab E.

²² (b) (4) Petition Tab E.

²³ (b) (4) is using (b) (4) estimates of purchased RIN costs, although it notes that (b) (4) estimated costs for purchased RINs are (b) (4) than the RIN prices in early 2017 in advance of the 2016 compliance deadline. (b) (4) states that (b) (4) . . . (b) (4) Petition at Tab E. EPA notes

that 2016 D6 RINs were trading at \$0.44/RIN, 2016 D5 RINs were trading at \$0.85/RIN, and 2016 D4 RINs were trading at \$0.85/RIN on February 2, 2017 using public data from Progressive Fuels Limited,

<http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com>

[/web_data/pfildaily.pdf](http://web_data/pfildaily.pdf). (b) (4) also notes that its price for cellulosic biofuel RINs is the cellulosic waiver credit price.

²⁴ According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

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Table 3
(b) (4) Balance Sheet Data²⁵

	2013	2014	2015	2016
Cash	(b) (4)			
Short-term debt (current liabilities)	(b) (4)			
Long-term debt (notes payable)	(b) (4)			
Debt-to-equity ratio	(b) (4)			

(b) (4)

26

Table 4 summarizes data from (b) (4) condensed balance sheets for 2013 through 2016.²⁷ (b) (4) three-year average gross refining margin for 2014-2016 was (b) (4) the three-year industry average of \$11.40/bbl.²⁸ (b) (4) three-year average net refining margin for 2014-2016 was (b) (4) the three-year industry average of \$6.52/bbl.

²⁵ (b) (4) Supplemental Information Tab A.

²⁶ (b) (4) Petition Tab A at 3.13–15.

²⁷ Gross refining margin is a measure of a refinery's profitability. It is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is typically calculated by also subtracting operating expenses such as purchased fuel, electricity, labor, and routine maintenance expenses, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation, and finance charges.

²⁸ EPA calculated the three-year average industry gross and net refining margins for 2014-2016 based on public information.

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Table 4
 (b) (4) Refining Margins Data^{29, 30, 31}

	2013	2014	2015	2016
Gross refining margin, \$ per bbl	(b) (4)			
National 2016 average gross refining margin, \$ per bbl				8.68
Net refining margin, \$ per bbl	(b) (4)			
National 2016 average net refining margin, \$ per bbl				4.09

(b) (4) also states that (b) (4)

” and that “(b) (4)

”³²

(b) (4) further provided financial data specific to its (b) (4)

³³

Table 5 contains data taken from (b) (4) condensed income statements, which shows that (b) (4) had a (b) (4) in 2016.

²⁹ (b) (4) Supplemental Information Tab A. Although net margin generally excludes operating expenses, (b) (4) reported its net margin including operating expenses. See id.; cf. also id. (reporting margin excluding operating expenses on a separate line labeled “Operating Income Before Depreciation”). Following our general practice, EPA used the net margin figures reported by (b) (4)

³⁰ EPA calculated the 2016 national average refining margins from publically available data.

³¹ (b) (4) originally submitted its financial information on a fiscal year basis. Subsequently, upon EPA’s request, (b) (4) submitted financial information on a calendar year basis. In this latter submission, (b) (4) noted that that it needed to estimate certain costs in calculating the gross refining margins, and that “(b) (4)

” (b) (4) Supplemental Information at 1-2.

³² (b) (4) Petition at 2.

³³ (b) (4) Petition Tab C.

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Table 5
(b) (4) Condensed Income Statements, \$³⁴

	2013	2014	2015	2016
Revenues	(b) (4)			
Cost of Sales				
- Cost of Crude Oil to Production	(b) (4)			
Gross Margin After Crude Oil	(b) (4)			
- Other Cost of Sales	(b) (4)			
Net Margin after all Cost of Sales	(b) (4)			
Operating Expenses Before Depreciation	(b) (4)			
Operating Income Before Depreciation	(b) (4)			
Depreciation and Amortization	(b) (4)			
Operating Income	(b) (4)			
Other Income and Expenses	(b) (4)			
Net Income Before Taxes	(b) (4)			
Provision for Income Taxes	(b) (4)			
Net Income (Loss)	(b) (4)			

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for (b) (4) if EPA determines that the refinery would experience “disproportionate economic hardship” in complying with the RFS program. This section provides the analysis and rationale for our grant of (b) (4) petition to extend its small refinery exemption for 2016.

A. DOE’s Evaluation of (b) (4) for 2016

EPA asked DOE to evaluate whether (b) (4) will experience “disproportionate economic hardship” in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Table 6 summarizes the results of DOE’s evaluation. A detailed description of DOE’s methodology is provided in the DOE Small Refinery Study.

Table 6³⁵
DOE Evaluation of (b) (4) Petition for 2016

1 Disproportionate Structural Impact Metrics	Score
a Access to capital/credit	0 = Good access (BB- or above credit rating) 5 = Moderate access (rating in B's)

³⁴ (b) (4) Supplemental Information Tab A.

³⁵ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE’s explanation regarding why it does not assign scores for the gray-shaded categories.

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	10 = Poor access (C rating or 50% D/E)	
b Other business lines besides refining and marketing	0 = Other Lines 10 = No Other Lines	
c Local market acceptance of Renewables	0 = Products accepted 10 = Product not accepted	
i E10	0 = High acceptance 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	
e Subject to exceptional state regulations	0 = not subject 5 = Some barriers for compliance 10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ³⁶	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d RINs net revenue or cost ³⁷	0 = revenue > cost 10 = revenue < cost	
Subtotal (average)		
Ranking (subtotal x 0.50)		
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency 5 = moderate impact 10 = impact on efficiency	
b Individual special events	0 = no special event 5 = moderate event 10 = special event impacting viability	
c Compliance costs likely to lead to shut down	0 = not likely to shut down 10 = likely to shut down	
Subtotal (average)		

³⁶ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015, based on public data (complete year industry data for 2016 was not publically available when DOE performed their evaluation). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) three-year average gross and net margins for 2013-2015 were (b) (4), respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for (b) (4)

³⁷ DOE has not scored this category for any hardship petition evaluations. See further discussion on this issue below.

Ranking (subtotal x 0.50)

The first ranking in Table 6 (disproportionate impacts) is a combination of the disproportional structural index and disproportionate economic impact index, and the second ranking in Table 6 is the viability index. (b)(4) applied by DOE

(b)(4) applied by DOE

(b)(4) applied by DOE

(b)(4) applied by DOE

(see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if either of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."³⁸ (b)(4) (b)(4) applied by DOE

(b)(4) (b)(4) applied by DOE

B. EPA's Evaluation of (b)(4) Hardship Petition for 2016

EPA has evaluated the information described in Section III., as well as DOE's analysis of (b)(4) to determine whether (b)(4) will experience "disproportionate economic hardship" from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that (b)(4) will experience "disproportionate economic hardship" and that exemption from its RFS obligations is warranted for 2016.

In determining whether (b)(4) will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts (b)(4). EPA generally defers to DOE's assessment due to DOE's expertise on the refining industry. In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. (b)(4) applied by DOE (b)(4) demonstrated (b)(4) applied by DOE (b)(4) applied by DOE. These disproportionate impacts disadvantage the refinery relative to the industry average and make compliance with RFS obligations relatively more

³⁸ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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burdensome. EPA finds that this disproportionate difficulty of compliance indicates that compliance with its RFS obligations would cause^{(b) (4)} disproportionate economic hardship.

For a disproportionately-impacted refinery like^{(b) (4)} its disproportionate economic hardship may be exacerbated by a difficult year for the industry as a whole. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend, coupled with its disproportionate economic and structural impacts, can result in tangible effects on the small refinery, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire RINs for compliance, and the potential to impair refinery operations. In addition, structurally impacted refineries often lack access to capital or credit that can also be necessary to achieve compliance.

(b) (4) financial performance further shows that it would suffer disproportionate economic hardship from compliance with RFS obligations. ^{(b) (4)} operated at a (b) (4) in 2016. ^{(b) (4)} also operated at (b) (4)

For the reasons discussed above, EPA finds that^{(b) (4)} would suffer a disproportionate economic hardship if it had to comply with its RFS obligations for 2016 and should be granted full relief.³⁹

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with the RFS requirements. Based on our analysis of all of the available information about^{(b) (4)} and our consultation with DOE, EPA has concluded that^{(b) (4)} will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements. Therefore, EPA is granting (b) (4) request for a temporary extension of its RFS hardship exemption through December 31, 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

³⁹(b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

(b) (4) (b)(4) applied by DOE (b) (4) While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship (see footnote 10), EPA may choose to grant full relief based on its own independent review of the small refinery's information.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 23 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated December 13, 2017, to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the (b) (4) (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party under the RFS program for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Grundler", written over a horizontal line.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Contains Material Claimed as Confidential Business Information

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
(b) (4)**

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated December 13, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) (b) (4) refinery in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of its RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) (b) (4) (b)(4) applied by DOE

(b)(4) (b)(4) (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by (b)(4) (b)(4) applied by DOE (b)(4) EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) (b)(4) (b)(4) applied by DOE (b)(4)

(b)(4) (b)(4) applied by DOE (b)(4) (b)(4) applied by DOE (b)(4)

Table 1⁴
DOE Evaluation of (b) (4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	■
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	■
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	■
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	■
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	■
2 Disproportionate Economic Impact Metrics		

³ From DOE recommendation for (b) (4) transmitted to EPA on March 13, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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a	Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	■
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	■
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	■
d	RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		■
	Ranking (subtotal x 0.50)		■
3	Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	■
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	■
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	■
	Subtotal (average)		■
	Ranking (subtotal x 0.50)		■

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on December 13, 2017, for an extension of the RFS small refinery exemption for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4) (b) (4)

(b) (4)

(b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

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Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that (b)(4) along with other metrics of (b)(4) (b)(4). Based on our review of all of the available information about (b) (4) and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of its small refinery RFS hardship exemption for 2017.

(b)(4) applied by DOE (b) (4) (b)(4) applied by DOE
(b)(4) applied by DOE
(b)(4) applied by DOE EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.⁷

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ *Sinclair*, 874 F.3d at 1166; See also *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 14, 2019

OFFICE OF
AIR AND RADIATION

Mr. Michael Norman
Vice President Environmental & Regulatory Affairs
Delek US Holdings, Inc.
Attn: Delek Refining, Ltd., Tyler Refinery
7102 Commerce Way
Brentwood, TN 37027

Dear Mr. Norman:

I am writing in response to the petition from Delek Refining, Ltd. ("Delek") for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for Delek's refinery in Tyler, Texas (the "Tyler Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, Delek submitted a petition to EPA dated September 28, 2018, to extend the exemption for the Tyler Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of Delek's RFS small refinery exemption. This means that from January 1, 2017, through December 31, 2017, the Tyler Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and Delek is not subject to the requirements of an obligated party for fuel produced at the Tyler Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink that reads "Ben Hengst, for".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Contains Material Claimed as Confidential Business Information

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Delek Refining, Ltd.'s Tyler Refinery**

**Contains Information Claimed by
Delek Refining, Ltd.
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Delek Refining, Ltd. (“Delek”) dated September 28, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for Delek’s Tyler, Texas, refinery (the “Tyler Refinery”) in 2017. For the reasons described herein, EPA is granting Delek’s request for an extension of the Tyler Refinery’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) applied by DOE the Tyler Refinery’s (b)(4) applied by DOE

(b)(4) applied by DOE

(b)(4) applied by DOE the Tyler Refinery (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the Tyler Refinery (b)(4) applied by DOE. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4).

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the Tyler Refinery (b)(4) applied by DOE. Therefore, (b)(4) applied by DOE the Tyler Refinery (b)(4) applied by DOE.

Table 1⁴
DOE Evaluation of the Tyler Refinery's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance	(b)(4)

³ From DOE recommendation for the Tyler Refinery transmitted to EPA on March 11, 2019.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

Delek submitted a petition to EPA on September 28, 2018, for an extension of the RFS small refinery exemption for the Tyler Refinery for 2017. In support of its petition, the Tyler

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Tyler Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

Refinery submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that the Tyler Refinery believes demonstrate DEH. The petition states that the Tyler Refinery's (b) (4)

[REDACTED]
[REDACTED]⁷ [REDACTED] (b) (4)
[REDACTED]
[REDACTED]
[REDACTED] The petition also states that the Tyler Refinery [REDACTED] (b) (4)
[REDACTED]⁸ [REDACTED] (b) (4)
[REDACTED]
[REDACTED]⁹ However, its parent company recently
refinanced its debt and received a corporate family rating of “Ba3” from Moody’s and “BB” by
Standard & Poor’s.¹⁰ Also impacting the Tyler Refinery’s [REDACTED] (b) (4)
[REDACTED]¹¹, [REDACTED] (b) (4)
[REDACTED]¹², [REDACTED] (b) (4)
[REDACTED] Tyler Refinery’s [REDACTED] (b) (4)
[REDACTED]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, the Tyler Refinery's petition presents financial information that documents (b) (4)

Based on our review of all of the available information about the Tyler Refinery, and our consultation with DOE, EPA has concluded that the Tyler Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting Delek's request for a temporary extension of the Tyler Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE the Tyler Refinery (b)(4) applied by DOE

[REDACTED], EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and “other economic factors” and it is consistent with

¹² Aswath Damodaran, *Cost of Capital by Sector (US)*, New York University Stern School of Business, available at http://people.stern.nyu.edu/adamodar/New_Home_Page/dataarchived.html (last accessed March 12, 2019). The industry used for comparison purposes was Oil/Gas (Production and Exploration), and it represents the average cost of capital across 311 companies.

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the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹³

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

¹³ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY

2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

MAY 04 2017

OFFICE OF
AIR AND RADIATION

Mr. Kirk A. Latson
Ergon-West Virginia, Inc.
9995 Ohio River Blvd
Post Office Box 356
Newell, West Virginia 26050-0356

Dear Mr. Latson:

I am writing in response to the petition from Ergon-West Virginia, Inc. (EWV) for a one-year extension of the small refinery exemption from the requirements of the Renewable Fuel Standard (RFS) program for Ergon-West Virginia's refinery in Newell, WV. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. EWV's refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2), small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, EWV submitted a petition to the EPA dated December 30, 2016, to extend the exemption for the Newell, WV refinery for 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that EWV will not experience "disproportionate economic hardship" at the Newell, WV refinery by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is denying EWV's petition requesting a further extension of its RFS small refinery temporary exemption. This means that as of January 1, 2016, EWV's gasoline and diesel production is subject to the percentage standards of 40 CFR 80.1405, and EWV is subject to all other requirements applicable to obligated parties under the RFS program. In addition, should EWV produce renewable fuel and/or generate or acquire Renewable Identification Numbers (RINs), it will remain subject to RFS regulatory requirements that apply to such actions.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grundler", is written over the word "Sincerely,".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Denial of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program For
Ergon-West Virginia, Inc.'s
Newell, WV Refinery**

**Contains Information Claimed by
Ergon-West Virginia, Inc.
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Ergon-West Virginia, Inc. (“EWV”) dated April 13, 2016, for a three-year extension of the RFS small refinery exemption for EWV’s Newell, West Virginia refinery for its 2014, 2015, and 2016 RFS obligations. On June 30, 2016, EPA denied EWV’s petition for 2014 and 2015, and on August 11, 2016, EWV withdrew its petition for 2016 with the intent of submitting a revised petition at a later date. On December 30, 2016, EWV submitted its revised 2016 petition. For the reasons described herein, EPA is denying EWV’s request for an extension of its RFS small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA’s regulations

implementing the EISA amendments (“RFS2”), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose “disproportionate economic hardship” on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that “disproportionate economic hardship” exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a “disproportionate economic hardship,” provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience “disproportionate economic hardship” from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and summarizes DOE’s revised approach to evaluating when “disproportionate economic hardship” may exist.³

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² “Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

³ Excerpt from pp. 1–3 of the DOE Small Refinery Study. A complete explanation of DOE’s hardship evaluation process and its conclusions is available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

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On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPAAct 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.
- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

⁴ The Senate Report (Senate Report 111-45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).⁵

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries' blendstock, resulting in no net cost of compliance for the refinery. See Dallas Burkholder, "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-0111-0062.

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unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impacts index between 0 and 10. The disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two-year extension of its RFS exemption.

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In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country's economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm's competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when "disproportionate economic hardship" exists in the context of the RFS program.

EPA considers DOE's assessment of whether a small refinery will face disproportionate impacts in complying with its RFS obligations. The DOE analysis informs EPA's finding of whether "disproportionate economic hardship" exists and in turn EPA's resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.¹⁰ In addition to the metrics DOE applies in assessing disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

EWV submitted a revised 2016 petition to EPA dated December 30, 2016 ("EWV Petition"), for an extension of the RFS small refinery exemption for EWV for 2016,¹¹ and a supplement to its petition on January 27, 2017 ("EWV Supplemental Information"). In support of its petition, EWV submitted a completed DOE survey form PI-588, which specified the factors that EWV believes demonstrate disproportionate economic hardship. EWV also provided a petition document with additional explanation regarding the hardship the refinery would face in complying with the RFS program, along with financial statements for 2013–2016. EWV also provided EPA with anticipated compliance costs for RFS and an explanation of its efforts to comply with its RFS obligations. All of this information was forwarded to DOE for consideration in its analysis.

¹⁰ EPA also considers DOE's analysis of a small refinery's viability, which DOE assesses as the second component of "disproportionate economic hardship." DOE Small Refinery Study at 3 ("Disproportionate economic hardship must encompass two broad components...and an effect sufficient to cause a significant impairment of the refinery operations."); DOE Small Refinery Study at 27, 36 ("Refiner viability refers to the ability of the refiners to remain competitive and profitable."). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on "viability," but we are changing our approach. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship, compliance with RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery's operations are not significantly impaired.

¹¹ EWV did not receive an exemption from its RFS obligations for 2011 through 2015.

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EPA finds that EWV has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding EWV's operations, RFS compliance costs, and financial condition. EWV provided most of this information to EPA in its petition and in other supporting documents (e.g., EWV financial information, RFS compliance cost estimates). EPA obtained the remaining information from public sources and from DOE (e.g., average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of EWV's Operations

EWV's refinery is located in Newell, West Virginia. EWV is owned by Ergon, Inc. (or "Ergon"), which is a privately-held company in the oil and gas business, with operations primarily in southeastern states.

EWV qualified as a small refinery under both the RFS1 and RFS2 regulations, and was exempted from the RFS standards from 2006 through 2010. EWV's maximum crude capacity is 23,000 barrels per day (bpd).¹² EWV processes primarily Pennsylvania grade crude oil and produces gasoline and diesel, along with a significant amount of paraffinic base oils.¹³ A list of typical production rates is shown below in Table 1.

Table 1
EWV Process Information

Processing Unit	Volume
Crude distillation unit capacity	23,000 bpd
Volume of transportation fuel produced in 2016 ¹⁴	(b)(4) (b)(4)
Geographic locations in which fuel will be sold	PADD 1 (East Coast Region) and PADD 2 (Midwest Region) ¹⁶

EWV sells nearly all of its gasoline and diesel fuel (b)(4) to customers within a 170-mile radius of the refinery. (b)(4)

¹² EWV Petition at 1.

¹³ EWV Petition at 1, 3.

¹⁴ As noted earlier, EWV produces a significant amount of paraffinic base oils, along with gasoline and diesel.

¹⁵ EWV Petition Tab C.

¹⁶ PADDs 1 and 2 are two of several Petroleum Administration for Defense Districts (PADDs), which are geographic regions used for analysis of petroleum product supply and movements.

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EWV installed ethanol- and biodiesel-blending infrastructure at its facility (b) (4)

¹⁷ EWV states that (b) (4)

¹⁸ EWV was (b) (4)

¹⁹

B. Summary of EWV's RFS Compliance Costs

EWV provided EPA with the following information regarding EWV's RFS compliance costs in 2016, showing a total RFS compliance cost of (b) (4) for 2016.²⁰

Table 2
RFS Compliance Costs in 2016 for EWV

renewable fuel type	2016 standard	2016 RVO	2016 renewable volume blended	2016 cost of blended renewable	2016 total blended renewable fuel cost	2016 RINs separated EtOH-equiv	Carryover RINS from 2015	2016 RIN shortfall EtOH-equiv	2016 purchased RIN cost ²¹	2016 total purchased RIN cost	2016 total RFS cost
	%	gallons	gallons	\$/gallon	\$				\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)									
biomass-based diesel	1.590										
advanced biofuel	2.010										
renewable fuel	10.100										
total cost											

C. EWV's Financial Condition

As described in Section III.A, EWV is owned by Ergon, Inc. Table 3 summarizes data from EWV's condensed balance sheets showing EWV's cash, short-term debt, long-term debt, and debt-to-equity ratios for 2013-2016.²²

¹⁷ EWV Petition Tab A at 4.6.

¹⁸ EWV Petition at 3.

¹⁹ EWV Petition Tab C.

²⁰ EWV Petition Tab C.

²¹ EPA is using EWV's estimates of purchased RIN costs, although it notes that EWV's estimated costs for purchased RINs are significantly higher than the RIN prices in early 2017 in advance of the 2016 compliance deadline. EPA notes that 2016 D6 RINs were trading at \$0.44/RIN, 2016 D5 RINs were trading at \$0.85/RIN, and 2016 D4 RINs were trading at \$0.85/RIN on February 2, 2017 using public data from Progressive Fuels Limited, http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfldaily.pdf.

²² According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

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Table 3
EWV Balance Sheet Data²³

	2013	2014	2015	2016
Cash	(b)	(4)		
Short-term debt (current liabilities)				
Long-term debt (notes payable)				
Debt-to-equity ratio				

EWV (b) (4)

24

Table 4 summarizes data from EWV's condensed balance sheets for 2013 through 2016.²⁵ EWV's three-year average gross refining margin for 2014–2016 was (b) (4) the three-year industry average of \$11.40/bbl.²⁶ EWV's three-year average net refining margin for 2014–2016 was (b) (4) the three-year industry average of \$6.52/bbl. For 2016, both the gross and net refining margins of EWV were (b) (4)

²³ EWV Supplemental Information Tab B.

²⁴ EWV Petition Tab A at 3.13–15.

²⁵ Gross refining margin is a measure of a refinery's profitability. It is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is typically calculated by also subtracting operating expenses such as purchased fuel, electricity, labor, and routine maintenance expenses, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation, and finance charges.

²⁶ EPA calculated the three-year average industry gross and net refining margins for 2014–2016 based on public information.

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Table 4
EWV Refining Margins Data^{27, 28, 29}

	2013	2014	2015	2016
Gross refining margin, \$ per bbl	(b) (4)			
National 2016 average gross refining margin, \$ per bbl				8.68
Net refining margin, \$ per bbl	(b) (4)			
National 2016 average net refining margin, \$ per bbl				4.09

EWV also states that “the refinery is focused on producing paraffinic base oils,” and (b) (4)
(b) (4) EWV’s (b) (4)

30

Table 5 contains data taken from EWV’s condensed income statements, which shows that EWV
(b) (4)

²⁷ EWV Supplemental Information Tab B. (b) (4)
(b) (4)

See id.; cf. also id. (b) (4)

, EWV

Following our general practice, EPA

used the net margin figures reported by EWV.

²⁸ EPA calculated the 2016 national average refining margins from publically available data.

²⁹ EWV originally submitted its financial information on a fiscal year basis. Subsequently, upon EPA’s request, EWV submitted financial information on a calendar year basis. In this latter submission, EWV noted t(b) (4)

Ergon’s (b) (4)

EWV Supplemental Information at 1–2.

³⁰ EWV Petition at 1–2.

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Table 5
EWV Condensed Income Statements, \$³¹

	2013	2014	2015	2016
Revenues	(b)	(4)	(4)	(4)
Cost of Sales				
- Cost of Crude Oil to Production				
- Cost of Ethanol				
- Cost of Biodiesel				
- Cost of Raw Materials				
Gross Margin After Raw Materials				
- Other Cost of Sales				
Net Margin after all Cost of Sales				
Operating Expenses Before Depreciation				
Operating Income Before Depreciation				
Depreciation and Amortization				
Operating Income				
Other Income and Expenses				
Net Income Before Taxes				
Provision for Income Taxes				
Net Income (Loss)				

IV. Application of the Criteria for Hardship Relief

EPA may extend the small refinery exemption for EWV if EPA determines that the refinery would experience “disproportionate economic hardship” in complying with the RFS program. This section provides the analysis and rationale for our denial of EWV’s petition to extend its small refinery exemption for 2016.

A. DOE’s Evaluation of EWV for 2016

EPA asked DOE to evaluate whether EWV will experience “disproportionate economic hardship” in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Tables 6 summarizes the results of DOE’s evaluation. A detailed description of DOE’s methodology is provided in the DOE Small Refinery Study.

³¹ EWV Supplemental Information Tab B.

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Table 6³²
DOE Evaluation of EWV's Petition for 2016

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating) 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	0
b Other business lines besides refining and marketing	0 = Other Lines 10 = No Other Lines	0
c Local market acceptance of Renewables	0 = Products accepted 10 = Product not accepted	0
i E10	0 = High acceptance 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	10
e Subject to exceptional state regulations	0 = not subject 5 = Some barriers for compliance 10 = subject to exceptional state regulations	0
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ³³	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	0
b Renewable fuel blending (% of production)		0
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	0
d RINs net revenue or cost ³⁴	0 = revenue > cost 10 = revenue < cost	
Subtotal (average)		1.3
Ranking (subtotal x 0.50)		0.6
3 Viability Metrics		

³² The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

³³ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015 based on public data (complete year industry data for 2016 was not publically available when DOE performed their evaluation). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). EWV's three-year average gross and net margins for 2013-2015 were (b) (4), respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for EWV.

³⁴ DOE has not scored this category for any hardship petition evaluations. See further discussion on this issue below.

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a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency 5 = moderate impact 10 = impact on efficiency	0
b	Individual special events	0 = no special event 5 = moderate event 10 = special event impacting viability	0
c	Compliance costs likely to lead to shut down	0 = not likely to shut down 10 = likely to shut down	0
Subtotal (average)			0.0
Ranking (subtotal x 0.50)			0.0

The first ranking in Table 6 (disproportionate impacts) is a combination of the disproportionate structural index and the disproportionate economic impact index, and the second ranking in Table 6 is the viability index. (b)(4) applied by DOE

EWV (b)(4) applied by DOE

(see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if either of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."³⁵ (b)(4) applied by EWV's (b)(4) applied by DOE

WV.

B. EPA's Evaluation of EWV's Hardship Petition for 2016

EPA evaluated all of the information described in Section III, as well as DOE's analysis of EWV, to determine whether EWV will experience "disproportionate economic hardship" from compliance with its RFS requirements for 2016. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that EWV will not experience "disproportionate economic hardship" from compliance with the RFS program for 2016.

In determining whether EWV will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts EWV. EPA generally defers to DOE's assessment due to DOE's expertise on the refining industry. In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other

³⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. These disproportionate impacts could disadvantage a refinery relative to the industry average and make compliance with RFS obligations relatively more burdensome. However, (b)(4) applied by DOE EWV (b)(4) applied by DOE

Notwithstanding DOE's finding, EWV may nonetheless demonstrate disproportionate economic hardship based on other economic factors. It has not done so. EPA acknowledges that throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend may also have affected EWV, but did not cause tangible effects sufficient to hinder the refinery's ability to acquire RINs for compliance or to impair refinery operations. To the contrary, EWV's particular circumstances indicate that it would not suffer disproportionate economic hardship from compliance with its RFS obligations.

EWV's 2016 gross and net refining margins (b) (4) the 2016 industry averages (\$8.68/bbl and \$4.09/bbl, respectively). Likewise, EWV has been (b) (4)

(b) (4). While EWV's (b) (4) EWV still

EWV (b) (4)
Furthermore, EWV (b) (4)

(b) (4), EWV (b) (4)

EWV (b) (4). EWV's (b) (4) provides further evidence that the refinery would not suffering disproportionate economic hardship from compliance with its RFS obligations.

EPA further considered the language in the explanatory statement for the 2016 Consolidated Appropriations Act, which states: "The Secretary [of DOE] is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program." Consistent with this statement, EPA has adopted an approach which recognizes that disproportionate economic and structural impact can cause disproportionate economic harm even if the refiner cannot show an effect on "viability." However, as noted in Section IV.A, (b)(4) applied by DOE

EWV.³⁷

³⁶ EWV Petition at 1.

³⁷ Pursuant to the explanatory statement, had one of the two rankings in Table 6 been equal to or greater than 1 then DOE would have recommended a 50% waiver of the refinery's RFS obligations.

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EWV argues that because it “is focused on producing paraffinic base oils, which require the refinery to run a limited slate of crude oils, (b) (4)

EWV’s (b) (4)

³⁸ EPA disagrees that it should only look at the transportation fuel-specific net refining margins when evaluating EWV’s petition. A loss or reduced profit on one of multiple product lines does not necessarily indicate a hardship for the refinery overall. Instead, EPA looks at the overall margins for the crude oil that a small refinery processes, as this is a better indicator of the overall financial condition of the refinery and its ability to fulfill its RFS obligations. (b) (4)

reinforcing EPA’s determination that EWV’s financial condition allows it to comply with its 2016 RFS obligations without causing disproportionate economic hardship.

EWV states that “(b) (4)

EWV (b) (4)

.”³⁹ EWV (b) (4)

⁴⁰ EPA disagrees, and finds that it is unnecessary to resolve whether the fact that EWV (b) (4) . Cf. supra n.5. EPA does not assess disproportionate economic hardship by comparing a petitioner to any one competitor, but rather to the industry average. Thus, even if EWV’s (b) (4)

EWV, as we explain, has not shown that it has a disproportionate economic or structural impact relative to the industry average or otherwise demonstrated disproportionate economic hardship.

EWV argues that (b) (4)

.⁴¹ EPA disagrees. EWV (b) (4)

While EPA delayed the compliance deadlines for the 2013-2015 RFS standards, that fact in and of itself does not relieve EWV of the duty to prepare for eventual compliance. Indeed, EWV (b) (4)

⁴² (b) (4)

⁴⁴ And EWV had adequate time to prepare to meet its obligation, either by acquiring RINs at any time throughout the four years sufficient to cover its estimated RVO, or by allocating financial resources to

³⁸ EWV Petition at 1–2.

³⁹ EWV Petition at 2.

⁴⁰ EWV Petition at 1–3.

⁴¹ EWV Petition at 4.

⁴² See 80 FR 33100 (June 10, 2015); 78 FR 9282 (Feb. 7, 2013).

⁴³ See 78 FR 49794 (Aug. 15, 2013).

⁴⁴ Cf. *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 920–21 (D.C. Cir. 2014) (rejecting Monroe Energy’s argument that obligated parties lacked sufficient notice to make informed business decisions about their compliance obligations because, among other things, obligated parties could readily estimate their obligations based on statutory volumes, EIA projections, and EPA’s proposed volume rule).

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eventually purchase RINs when compliance is eventually required. EPA believes that the revised deadlines for the 2013-2015 RFS standards gave all obligated parties sufficient time to prepare for compliance for each year, and that no hardship was created for any obligated party simply by delaying the compliance deadlines.

EWV states (b) (4)

EWV's (b) (4) ⁴⁵ EWV also states (b) (4)

⁴⁶ EWV raises (b) (4)

⁴⁷ EPA acknowledges that EWV (b) (4)

EWV (b) (4)

EWV (b) (4) . See supra n.5. EPA further recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. It is a normal practice in the refining industry for refineries to identify and implement, when possible, projects that improve refinery efficiency, reliability, or safety. The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, may reduce funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery, but that fact does not establish entitlement to an exemption.

For all of these reasons, we find that EWV has not demonstrated that compliance with its 2016 RFS requirements will result in “disproportionate economic hardship.” Based on this evaluation, an extension of the small refinery temporary exemption is not warranted for the year 2016.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a “disproportionate economic hardship” from compliance with its RFS requirements. Based on our analysis of all of the available information about EWV, and our consultation with DOE, EPA has concluded that EWV will not experience “disproportionate economic hardship” in complying with its 2016 RFS requirements. Therefore, EPA is hereby denying EWV's request for a temporary extension of its small refinery RFS hardship exemption for 2016.

This decision is a final agency action for purposes of CAA section 307(b)(1). Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁴⁵ EWV Petition at 2–3.

⁴⁶ EWV Petition at 3.

⁴⁷ EWV Petition at 4.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 2017

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4) :

I am writing in response to the petition from (b) (4) for a one-year extension, from January 1, 2016 through December 31, 2016, of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for (b) (4) refinery in (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. (b) (4) refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated October 17, 2016 to extend the exemption for the (b) (4) from January 1, 2016 through December 31, 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that (b) (4) will experience "disproportionate economic hardship" at the (b) (4) by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting (b) (4) petition for a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, (b) (4) gasoline and diesel production at the (b) (4) are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grundler", is written over the word "Sincerely,".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

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**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
For**

(b) (4)

Contains Information Claimed by

(b) (4)

To be Confidential Business Information

Office of Transportation and Air Quality

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EPA received a petition from (b) (4) on October 17, 2016, for a one year extension of the RFS small refinery exemption for its (b) (4). For the reasons described herein, EPA is granting (b) (4) request for a one-year extension of the RFS exemption for the (b) (4) through December 31, 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible (“renewable volume obligation”, or “RVO”). CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as

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those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

Under CAA section 211(o)(9), EPA may extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years. CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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studies, and summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and its conclusions are available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall).⁵

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and were then averaged to derive a disproportionate impact index between 0 and 10. The

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blendstock, resulting in no net cost of compliance for the refinery. See Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-0111-00062.

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disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the possibility of an intermediate score allows DOE to more accurately assess an

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a two year extension of its RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refinery's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how “other economic factors” may

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

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cause a small refinery to experience “disproportionate economic hardship” if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

(b) (4) submitted a petition to EPA on October 17, 2016 (“2016 Petition” or “petition”), for an extension of the RFS small refinery exemption for its (b) (4)¹⁰. Without an extension of its small refinery exemption, the (b) (4) would be required to comply with the RFS program beginning January 1, 2016. (b) (4) has requested that EPA delay the compliance date to January 1, 2017.

In support of its petition, (b) (4) submitted a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate disproportionate economic hardship. (b) (4) also provided additional explanation regarding the hardship the refinery would face in complying with the RFS program, and the date by which it anticipates compliance with the requirements (b) (4)¹¹. (b) (4) has also provided additional information, including, but not limited to, information clarifying its answers to some of the questions in DOE’s survey form, and has provided an estimate of its RFS compliance costs in 2016 absent an extension of the compliance deadline for the (b) (4). This information was all forwarded to DOE for consideration in its analysis.¹²

EPA finds that (b) (4) has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding (b) (4) operations, RFS compliance costs and financial condition. (b) (4) provided most of this information to EPA in its 2016 Petition and in other supporting documents (*e.g.*, email responses to EPA staff questions, (b) (4) financial information). EPA obtained the remaining information from public sources (*e.g.*, process information for the (b) (4) from the EIA Annual Refinery Capacity Report) and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of (b) (4)

Operations

¹⁰ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year’s RVO.

¹¹ 2016 Petition, p. 15.

¹² (b) (4) 2016 Petition included financial documents and a PI-588 form which covered the first 6 months of 2016, and an RFS compliance cost estimate based on data for the first 6 months of 2016. At EPA’s request, (b) (4) provided updates to all of these documents based on the first 9 months of 2016, see November 18, 2016 and December 30, 2016 emails from (b) (4) to Chris McKenna. At EPA’s request (b) (4) also provided full-year updates to their 2016 financial documents and RFS compliance cost estimate, see January 16, 2017 email from (b) (4) to Chris McKenna.

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The (b) (4)

13

The (b) (4) qualified as a small refinery under both the RFS1 and RFS2 regulations, and has been exempt from the RFS standards from (b)(4)¹⁴

Through refinery expansion projects, (b) (4)

¹⁵ The refinery primarily processes (b) (4)

¹⁶ A list of primary processing units and volumes of primary liquid products is shown in Table 1.

(b) (4) Table 1
Process Information ¹⁷

Processing Unit	Capacity
Crude distillation unit	(b) (4)
Vacuum distillation unit	(b) (4)
Naphtha hydrotreater	(b) (4)
Naphtha reformer	(b) (4)
Kerosene/jet fuel hydrotreater	(b) (4)
Distillate hydrotreater	(b) (4)
Gas oil hydrocracking unit	(b) (4)
Delayed coking unit	(b) (4)
Hydrogen plant	(b) (4)
Sulfur recovery unit	(b) (4)
Volume of primary liquid products in 2016	(b) (4)

¹³ See p. 7 of the (b) (4), and January 18, 2017 email from (b) (4) to Chris McKenna.

¹⁴ The refinery received a (b)(4)-year extension of its small refinery exemption (for (b)(4)) in response to a petition by (b) (4) in (b)(4)

(b)(4) (b) (4)(b)(4)

(b)(4) (b) (4)(b)(4)

(b)(4) (b) (4)(b)(4)

¹⁵ 2016 Petition, p. 2.

¹⁶ Crude oil information provided in email from (b) (4) to Chris McKenna dated March 24, 2016, product information (including product volumes in Table 1) provided in spreadsheet attachment to email from (b) (4) to Chris McKenna dated December 30, 2016.

¹⁷ Data obtained from DOE's Annual Refinery Capacity Report for 2016, which contains data as of January 1, 2016.

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	(b) (4)
Geographic locations in which fuel will be sold	(b) (4)

Approximately (b) (4)

¹⁸ Approximately (b) (4)

¹⁹ (b) (4)

²⁰

B. Summary of (b) (4) RFS Compliance Costs

(b) (4) provided information on its estimated cost of complying with the renewable fuel standards in 2016, absent an extension of its RFS small refinery exemption.²¹ Table 2a shows (b) (4) estimated RFS compliance costs for average production of (b) (4) gasoline and (b) (4) diesel in 2016.²²

Table 2a
(b) (4) Estimated RFS Compliance Costs for 2016 (12/30/16 RIN prices)

renewable fuel type	2016 std.	2016 renewable volume obligation	Renewable volume blended by (b) (4)	Net cost of renewable blended by (b) (4)	Total cost of blended renewable fuel	RINs separated by (b) (4) EtOH-equivalent	RIN shortfall, EtOH-equivalent	Cost of purchased RINs	Total cost of purchased RINs	Total RFS cost
	%	gallons	gallons	\$/gallon	\$			\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)								
biomass-based diesel	1.59	(b) (4)								
advanced biofuel	2.01	(b) (4)								
renewable fuel	10.10	(b) (4)								
Total cost					(b) (4)					

For comparison, EPA has also estimated (b) (4) cost of compliance using annual average RIN prices for 2016, and RIN prices as of February 17, 2017 (shortly before this decision document was issued).²³ Table 2b shows EPA's estimated cost using all of (b) (4) data

¹⁸ (b) (4) PI-588 survey form, part 5.11-12, December 30, 2016.

¹⁹ (b) (4) PI-588 survey form, part 4.4-5, December 30, 2016

²⁰ (b) (4) PI-588 survey form, part 4.4, December 30, 2016.

²¹ Email from (b) (4) to Chris McKenna dated January 16, 2017. RIN prices taken from Oil Price Information Service's (OPIS's) end-of-day ethanol assessment report for December 31, 2016, month end.

²² Average daily production rates for full-year 2016.

²³ EPA calculated average 2016 RIN prices for cellulosic biofuel, biomass-based diesel, advanced biofuel and renewable fuel from OPIS's end-of-day RIN prices published from 1/1/16 through 12/31/16.

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from Table 2a, except that annual average 2016 RIN prices were used in place of (b) (4) 12/30/16 RIN prices. Table 2c shows EPA's estimated cost using all of (b) (4) data from Table 2a, except that 2/17/17 RIN prices were used in place of (b) (4) 12/30/16 RIN prices.²⁴ Tables 2b and 2c are shown here for illustrative purposes, Table 2a will be used for evaluation of (b) (4) petition.

Table 2b

EPA Estimate of (b) (4) RFS Compliance Costs in 2016 (2016 average RIN prices)

renewable fuel type	2016 std.	2016 renewable volume obligation	Renewable volume blended by (b) (4)	Net cost of renewable blended by (b) (4)	Total cost of blended renewable fuel	RINs separated by (b) (4) EtOH-equivalent	RIN shortfall, EtOH-equivalent	Cost of purchased RINs	Total cost of purchased RINs	Total RFS cost
	%	gallons	gallons	\$/gallon	\$	\$		\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)								
biomass-based diesel	1.59	(b) (4)								
advanced biofuel	2.01	(b) (4)								
renewable fuel	10.10	(b) (4)								
Total cost					(b) (4)					

Table 2c

EPA Estimate of (b) (4) RFS Compliance Costs in 2016 (2/17/17 RIN prices)

renewable fuel type	2016 std.	2016 renewable volume obligation	Renewable volume blended by (b) (4)	Net cost of renewable blended by (b) (4)	Total cost of blended renewable fuel	RINs separated by (b) (4) EtOH-equivalent	RIN shortfall, EtOH-equivalent	Cost of purchased RINs	Total cost of purchased RINs	Total RFS cost
	%	gallons	gallons	\$/gallon	\$	\$		\$/RIN	\$	\$
cellulosic biofuel	0.128	(b) (4)								
biomass-based diesel	1.59	(b) (4)								
advanced biofuel	2.01	(b) (4)								
renewable fuel	10.10	(b) (4)								
Total cost					(b) (4)					

(b) (4)

petition stated that (b) (4)

(b) (4) petition also stated that (b) (4)

(b) (4)

25

C. (b) (4) Financial Condition

In (b) (4)

In order to (b) (4)

26 (b) (4)

²⁴ February 17, 2017 prices are for 2016 RINs, taken from the PFL Fuel Services webpage available at: http://web.archive.org/web/20170217044138/http://progressivefuelslimited.com/web_data/pfldaily.pdf.

²⁵ 2016 Petition, p. 11.

²⁶ 2016 Petition p. 2.

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(b) (4)

. 27

Also as part of (b) (4)

. 28 (b) (4)

. 29 (b) (4)

. 30

In support of its 2016 Petition, (b) (4) provided unaudited reports of its consolidated financial statements for 2016, including a balance sheet for December 31, 2016, and statement of operations and statement of cash flow for full-year 2016.³¹ (b)(4)

Table 3 summarizes data from (b) (4) PI-588 survey form in its petition and (b) (4) unaudited consolidated balance sheet for December 31, 2016 showing how (b) (4)

²⁷ See p. 18 of the (b) (4)

Also as part of (b) (4)

. This (b) (4)

See

p. 2 in (b) (4) Petition.

²⁸ On (b) (4)

. See p. 14 in the (b) (4)

²⁹ 2016 Petition, p. 3.

³⁰ (b) (4)

See p. 17

in the (b) (4)

³¹ Email from (b) (4) to Chris McKenna dated January 16, 2017. (b) (4)

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(b) (4)
December 31 of each year.³³

³² Data for each year was tabulated as of

Table 3
(b) (4) Balance Sheet Data, \$ million

	Short-term debt (current liabilities)	Long-term debt	Total stockholders' equity	Ratio of total debt to total equity
2013	(b) (4)			
2014	(b) (4)			
2015	(b) (4)			
2016	(b) (4)			

(b) (4), but stated in its petition that (b) (4)

³⁴ In 2016, (b) (4)

In 2017

and 2018, (b) (4)

³⁵ (b) (4)

(b) (4) also stated in its PI-588 survey form that (b) (4)

³⁶

When (b) (4)

³⁷

However, (b) (4)

³⁸ Table 4 summarizes data for the (b) (4)

³² According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio between 0 and 1.0. Figures for (b) (4)

Ratio of total debt to total equity was calculated by adding short-term and long-term debt, and dividing the sum by the total equity (b) (4)

(b) (4)

³³ Figures for short-term and long-term debt for 2013, 2014 and 2015 were taken from (b) (4) PI-588 forms in their (b)(4) 2016 Petitions. Debt figures for 2016 were taken from (b) (4) unaudited consolidated balance sheet for December 31, 2016.

³⁴ 2016 Petition, p. 3.

³⁵ (b) (4) PI-588 survey form, part 3.8.

³⁶ (b) (4) PI-588 survey form, part 3.13-14.

³⁷ (b) (4), p. 12 states that "(b) (4)

"

³⁸ See 2016 Petition, p. 2.

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margins from 2013 through September 30, 2016, taken from sections 3.6 and 3.7 of (b) (4) PI-588 survey forms in its 2016 (b)(4)³⁹.

(b) (4) Table 4
Gross and Net Refining Margins⁴⁰

	Gross refining margin, \$/bbl	Net refining margin, \$/bbl
2013	(b) (4)	
2014	(b) (4)	
2015	(b) (4)	
2016 (through 9/30/16)	(b) (4)	

Table 5 contains data taken from (b) (4) consolidated statements of operations for 2013 through 2016.⁴¹ (b) (4)

⁴² From (b) (4)
. The refinery (b) (4)

. The refinery (b) (4)
. (b) (4) unaudited 2016 consolidated statement of operations includes the following note:

(b) (4)

³⁹ Gross refining margin is a measure of a refinery's profitability typically calculated by summing total product revenue, then subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses, such as purchased fuel and electricity, labor and routine maintenance, although different refiners may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

⁴⁰ During EPA's review of (b) (4) 2016 petition, EPA and (b) (4) determined that (b) (4) had (b) (4)

See December 30, 2016 email from (b) (4) to Chris McKenna. Also, (b) (4) 2016 margins through 9/30/16 included an estimated RFS compliance cost for the first 9 months of 2016 of approximately (b) (4) (i.e., assumes (b) (4) exemption is not extended for 2016).

⁴¹ Data for 2013 and 2014 is taken from consolidated statements of operations in the (b) (4)

. Data for 2015 is taken from consolidated statements of operations in the (b) (4)

. Data for 2016 is taken from (b) (4) unaudited consolidated statement of operations for the year ended December 31, 2016.

⁴² Email from (b) (4) to Chris McKenna dated January 18, 2017.

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(b) (4)

Table 5
(b) (4) Statements of Operations, \$ thousand

	<u>2013</u>	<u>2014</u>	2015	2016 ⁴³
Revenue:				
Refined products sales	(b) (4)			
Other	.(b) (4)	.		
Total revenue	(b) (4)			
Cost of products sold and direct operating expenses	.(b) (4)	.		
Gross (loss) profit	.(b) (4)	.		
Other costs and expenses:				
Selling and marketing	(b) (4)			
General and administrative	(b) (4)			
Depreciation and amortization	.(b) (4)	.		
Total operating expenses	.(b) (4)	.		
Loss from operations	(b) (4)			
Other income (expense):				
Interest expense	(b) (4)			
Other	.(b) (4)	.		
Loss before income taxes	(b) (4)			
Income tax (benefit) expense	.(b) (4)	.		
Net loss	(b) (4)			

⁴³ (b) (4)

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(b) (4) petition mentions (b) (4)

.⁴⁴

Table 6 contains data taken from (b) (4) consolidated statements of cash flows.⁴⁵ (b) (4)

flow included (b) (4) (b) (4) 2016 cash

consolidated statement of operations, (b) (4) .⁴⁶ As with (b) (4) 2016

⁴⁴ 2016 Petition p. 14. A turnaround is when a refinery shuts down some or all of its processing units in order to clean, repair, or replace worn out equipment, or install brand new equipment.

⁴⁵ Data for 2013 and 2014 is taken from consolidated statements of cash flows in the (b) (4)

for 2015 is taken from consolidated statements of cash flows in the (b) (4) . Data

from (b) (4) unaudited consolidated statement of operations for the year ended December 31, 2016. . Data for 2016 is taken

⁴⁶(b) (4)

see (b)(4)

Table 6
(b) (4) Statements of Cash Flows, \$ thousand

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Due to (b) (4)

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(b) (4)

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IV. Application of the Criteria for Hardship Relief

EPA may extend the temporary RFS exemption for the (b) (4) if EPA determines that the refinery would experience “disproportionate economic hardship” in complying with the RFS program. This section provides the analysis and rationale for our approval of (b) (4) petition to extend the small refinery exemption for the (b) (4)

A. DOE’s Evaluation of the (b) (4)

EPA asked DOE to evaluate whether the (b) (4) will experience “disproportionate economic hardship” in complying with the RFS requirements. EPA provided DOE all of the information described in Section III above. Table 7 summarizes the results of DOE’s evaluation. A detailed description of DOE’s methodology is provided in the DOE Small Refinery Study.

Table 7 ⁴⁹

DOE Evaluation of (b) (4) Completed PI-588 Survey Form

1 Disproportionate Structural Impact Metrics ⁵⁰	Score
--	-------

⁴⁷ 2016 Petition, p. 13. The (b) (4) qualified as a small volume refinery under EPA’s Tier 3 gasoline sulfur program, which enables (b) (4) to delay compliance with EPA’s 10 ppm average sulfur standard until January 1, 2020 under Tier 3, three years after the compliance start date for non-small refineries (January 1, 2017). See March 16, 2015 letter from John Weihrauch (EPA) to (b) (4)

However, Tier 3 small volume refineries may choose to generate Tier 3 gasoline sulfur credits beginning January 1, 2017 if their annual average gasoline sulfur is less than 10 ppm. See EPA’s Tier 3 Motor Vehicle Emission and Fuel Standards, published April 28, 2014. (b) (4) annual average gasoline sulfur was approximately (b) (4) in 2015, according to gasoline batch reports submitted by (b) (4) to EPA.

⁴⁸ 2016 Petition, p. 15.

⁴⁹ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE’s explanation regarding why it does not assign scores for the gray-shaded categories.

⁵⁰ (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b) (4) petition presents a number of arguments supporting (b) (4) proposed scoring, particularly for some of the

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a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i	E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii	E85	Not scored because of small E85 volumes	
iii	Biodiesel	Not available	
d	Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	
e	Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics			
a	Relative refining margin measure ⁵¹	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d	RINs net revenue or cost	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)			
Ranking (subtotal x 0.50)			
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment) ⁵²	0 = no impact on efficiency, 5 = moderate impact on efficiency,	

Disproportionate Structural Impact Metrics (e.g., access to capital/credit, other business lines, and level of local market acceptance of blended fuels). Ultimately, (b)(4) applied by DOE (b)(4) (b)(4) applied by DOE See further discussion in Section IV.B below.

⁵¹ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015, based on public data (complete year industry data for 2016 is not yet publicly available). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization) (b)(4) three-year average gross and net margins for 2013-2015 were (b)(4) and (b)(4) respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for (b)(4) average net margin for 2013-2015 includes the financial effect (b)(4) (b)(4)(b)(4)

⁵² In 2016, (b)(4)

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	10 = impact on efficiency	
b Individual special events ⁵³	0 = no special event, 5 = moderate event 10 = special event impacting viability	
c Compliance costs likely to lead to shut down ⁵⁴	0 = not likely to shut down, 10 = likely to shut down	
Subtotal (average)		
Ranking (subtotal x 0.50)		

DOE considers a refinery to experience “disproportionate economic hardship” if both rankings in Table 7 are equal to or greater than 1 (see DOE’s Small Refinery Study for more explanation). The first ranking (disproportionate impacts) is a combination of the disproportional structural impact index and disproportional economic impact index, and the second ranking is the viability index. (b)(4) applied by DOE

Thus, the (b) (4) (b)(4) applied by DOE

(b)(4) applied by DOE

EPA notes that DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a “50% waiver” of a small refinery’s RFS requirements if either of the rankings under Table 7 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: “If the Secretary finds that

(b) (4)

Petition

pp. 13-14. (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

⁵³ (b) (4)

Petition p. 14. (b)(4) applied by DOE

⁵⁴ (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b) (4)

DOE noted that (b) (4)

. (b) (4)

DOE had previously noted (b) (4)

DOE also noted that (b) (4)

DOE considers (b) (4)

see (b) (4) note on p. 14. (b) (4)

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either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”⁵⁵

B. EPA’s Evaluation of (b) (4) Hardship Petition

EPA evaluated all of the information described in Section III, as well as DOE’s analysis of the (b) (4) to independently determine whether the (b) (4) will experience “disproportionate economic hardship” from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to, profitability, net income or net loss, cash flow and cash balances, gross and net refining margins, ability to pay for refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds the (b) (4) will experience “disproportionate economic hardship” in 2016 from compliance with the RFS program.

We have considered (b)(4) applied by DOE the (b) (4) (b)(4) applied by DOE EPA has the responsibility for making the ultimate decision after considering DOE’s evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite—disproportionate economic hardship—involves “examining the impact of compliance costs on a refinery’s ability to maintain profitability and competitiveness—*i.e.*, viability—in the long term.”⁵⁶

We evaluate viability as an economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.” DOE Small Refinery Study at 3. DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.” *Id.* We evaluate viability in similar manner.

We consider whether the (b) (4) will remain a competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year’s financial statements, but also in the context of assessing the longer term prospects for the refinery. We also evaluate viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine

⁵⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

⁵⁶ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

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whether the (b) (4) faces a “disproportionate economic *hardship*” from compliance, and not merely an economic *impact*. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of “disproportionate economic hardship” from compliance with a small refinery’s RFS obligations. Here, we find that the (b) (4) compliance with its 2016 RFS obligations will significantly impact its viability.

As discussed previously, (b) (4)

(b) (4)
The (b) (4) three-year 2013-15 average refining margins (b) (4) than the three-year industry averages (\$12.32/bbl gross refining margin and \$7.35/bbl net refining margin). (b) (4) refining margins for the first 9 months of 2016 (b) (4) than industry averages for the first 9 months of 2016 (\$8.83/bbl gross refining margin and \$4.28/bbl net refining margin). In general, because of market volatility and the cyclical nature of the refining business, EPA places greater weight on three-year averages than on a single year in using refining margins to assess a refinery’s ongoing competitiveness and viability. The combination of (b) (4)

support EPA’s conclusion that (b) (4) will experience “disproportionate economic hardship” if required to fully comply with the RFS program in 2016.

EPA also notes that (b) (4)

⁵⁷ This appears to be partly due to (b) (4)

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In order to show “disproportionate economic hardship,” a small refinery needs to show that it faces RFS compliance costs that would “significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure.” See DOE Small Refinery Study at 36. For the reasons discussed above, EPA believes this is the case for the (b) (4) Due to (b) (4)

Thus, it appears (b) (4) overall financial situation is such that (b) (4) is unable to fully comply with its 2016 RFS obligations without causing a significant impairment of the refinery’s operations.

⁵⁷ Consolidated Statements of Cash Flows for the years ended December 31, 2016 and 2015.

⁵⁸ Calculated from (b) (4) unaudited consolidated balance sheet for December 31, 2016 by dividing total liabilities by total stockholders’ equity.

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While EPA is granting (b) (4) request in its 2016 petition, EPA wants to remind (b) (4) that it is an obligated party under the RFS program, so the presumption established by Congress is that (b) (4) will share in the compliance burden borne by all obligated parties.⁵⁹ While Congress eased that burden by granting (b) (4) and other qualifying small refineries *temporary* exemptions from their compliance obligations, the last of those exemptions expired on January 1, 2011.⁶⁰ Any further exemption depends on (b) (4) ability to demonstrate “disproportionate economic hardship.” Thus, in 2010, the statutory presumption was that in 2011 and future years, (b) (4) would shoulder its share of responsibility for the compliance burden borne by obligated parties under the RFS program, unless it could show “disproportionate economic hardship.”

EPA does not believe RFS compliance costs should be treated as optional, or as the final marginal cost incurred by a small refinery, such that loss in profitability is attributed first to RFS compliance which in turn justifies an exemption. Although EPA has relied on the data provided by (b) (4) in Table 2a in reaching its decision to grant (b) (4) petition, EPA additionally notes that (b) (4) estimated 2016 RFS compliance cost is approximately equal to EPA’s estimated cost of purchasing RINs on a systematic, ratable basis over the course of 2016 (EPA-estimated cost of (b) (4) vs. (b) (4) estimated cost of (b) (4) based on December 30, 2016 RIN prices).⁶¹ EPA also notes that (b) (4) estimated 2016 RFS compliance cost using February 17, 2017 RIN prices is only (b) (4) approximately (b) (4) than (b) (4) estimated cost. EPA recognizes that refineries are free to make business decisions regarding their RFS compliance strategy, but believes that owners of small refineries should be planning to comply with RFS each year using the most cost-efficient available means of compliance.

Moreover, while EPA acknowledges that profitability in the year at issue is relevant to its evaluation, it is not determinative. For example, where a small refinery made a substantial dividend payment and then applied for an exemption the following year on the grounds it lacked sufficient funds to comply with the RFS, the Court of Appeals for the D.C. Circuit held that EPA could fairly consider the degree to which the small refinery used its temporary exemption to prepare for RFS compliance in determining whether the small refinery was entitled to a further exemption.⁶² EPA notes that extending (b) (4) RFS exemption in 2016 (b) (4)

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⁵⁹ CAA section 211(o)(3)(B)(ii)(I).

⁶⁰ CAA section 211(o)(9)(A).

⁶¹ Email from (b) (4) to Chris McKenna dated January 16, 2017. RIN prices taken from Oil Price Information Service’s (OPIS’s) end-of-day ethanol assessment report as of December 30, 2016.

⁶² *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 578 (D.C. Cir. 2015).

⁶³ (b) (4)

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The cumulative savings from these exemptions have provided (b) (4) with significant funding to make preparations to fully comply with the RFS program. Additionally, EPA notes that (b) (4) also has the benefit of being owned by a larger company (b) (4) which can provide funding for stay-in-business expenses like compliance with the RFS program.

EPA also acknowledges the validity of (b)(4) applied by DOE
 (b)(4) the (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE (b)(4) applied by DOE
 (b)(4) (b)(4) to (b) (4) (b)(4) applied by DOE
 (b)(4) (b)(4) (b)(4)

Finally, EPA recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. However, it is a normal practice in the refining industry for refineries to identify and implement, when possible, projects that improve the efficiency, reliability, and safety of their refineries, and it is not unusual for refineries to suffer temporary shutdowns or fires. We recognize the cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, reduces funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery, but that fact alone does not establish entitlement to an exemption. EPA does not doubt that (b) (4) incurred costs, both planned and unplanned, which affected profitability. However, as discussed above, EPA believes that it is necessary to show that RFS compliance will have an impact on the refinery's long-term viability to be eligible for an exemption.

For the reasons explained above, we find that (b) (4) has demonstrated that compliance with its 2016 RFS requirements will result in “disproportionate economic hardship.” Based on this evaluation, an extension of the temporary exemption for the (b) (4) is warranted.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with its RFS requirements. Based on our analysis of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that (b) (4) will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements at the (b) (4). Therefore, EPA is hereby granting (b) (4) request for a temporary extension of the (b) (4) small refinery RFS hardship exemption through December 31, 2016.

(b) (4)

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This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000267

MAR 23 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4) :

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for (b) (4) refinery in (b) (4) (the (b) (4)). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated July 28, 2017 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
(b) (4)**

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated July 28, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery (the “(b) (4)” in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of the (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² Because the (b) (4)

(b)(4) applied by DOE
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the (b) (4) (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE the (b)(4) (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE the (b)(4) (b)(4) applied by DOE the (b)(4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of (b)(4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	Refer 1
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	Ref
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	Ref
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	Refer 1
e Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance	Ref

³ From DOE recommendation for the (b)(4) transmitted to EPA on February 9, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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10 = subject to exceptional state regulations		
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	Ref
b Renewable fuel blending (% of production)		Ref
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	Refer 1
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		Refer to
Ranking (subtotal x 0.50)		Refer to
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	Refer 1
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	Ref
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	Refer 1
Subtotal (average)		Refer to
Ranking (subtotal x 0.50)		Refer to

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on July 28, 2017 for an extension of the RFS small refinery exemption for the (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/barrel and \$6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively.

⁶ DOE has not scored this category for any hardship petition evaluations.

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which specified the factors that (b) (4) believes demonstrate DEH. The petition stated that (b) (4)
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8 (b) (4)

(b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, (b) (4) petition presents information (b) (4). (b) (4) petition also presents financial information that documents (b) (4). Based on our review of all of the available information about the (b) (4) and our consultation with DOE, EPA has concluded that the (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of the (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b) (4) applied by DOE the (b) (4)
 (b) (4) applied by DOE

and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹⁰

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ (b) (4) Petition at 9.

⁸ October 27, 2017 email from (b) (4) to Chris McKenna.

⁹ Id.

¹⁰ *Sinclair*, 874 F.3d at 1166; See also *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

MAR 1 2017

OFFICE OF
AIR AND RADIATION

Mr. Michael Norman
Vice President, Environmental and Regulatory Affairs
Delek U.S. Holdings
7102 Commerce Way
Brentwood, Tennessee 37027

Dear Mr. Norman:

I am writing in response to the petition from the Lion Oil Company (Lion Oil) for a one-year extension of the small refinery exemption for 2016 from the requirements of the renewable fuel standard (RFS) program for the Lion Oil's refinery in El Dorado, Arkansas ("the refinery" or "the El Dorado refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The El Dorado refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, Lion Oil submitted a petition to EPA dated September 15, 2016 to extend the exemption for the El Dorado refinery from January 1, 2016 through December 31, 2016. The EPA is addressing Lion Oil's request for 2016 in this decision.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that the El Dorado refinery will experience "disproportionate economic hardship" by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting Lion Oil's petition requesting an extension of the El Dorado refinery's RFS small refinery temporary exemption. This means that from January 1, 2016, through December 31, 2016, the El Dorado refinery's gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and Lion Oil is not subject to the requirements of an obligated party for fuel produced at the El Dorado refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grundler", written over a horizontal line.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Lion Oil Company's
El Dorado, AR Refinery**

**Contains Information Claimed by
Lion Oil Company to be
Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Lion Oil Company (“LOC”) dated September 15, 2016, for a one-year extension of the RFS small refinery exemption for the El Dorado, Arkansas Refinery (“LOR”), for obligation year 2016. For the reasons described herein, EPA is granting LOC’s request for a one-year extension of the LOR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as

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those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and

¹ EPA 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at,

<http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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were then averaged to derive a disproportionate impact index between 0 and 10. The disproportionate impact index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the

⁶ After DOE completed its study, DOE discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a 2-year extension of its RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). The statutory basis for EPA's evaluation of any extension request in response to an individual petition is the same as DOE's evaluation of the impact of the RFS on individual small refineries in the DOE Small Refinery Study – “disproportionate economic hardship.” CAA section 211(o)(9)(A)(ii), (B)(i). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program. For these reasons, DOE's analysis of whether a small refiner's RFS obligations will cause “disproportionate economic hardship” is a factor in EPA's evaluation regarding whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.

However, EPA's analysis extends beyond the metrics DOE applies in assessing potential disproportionate economic hardship. EPA considers all of the information submitted by a petitioner when it considers “other economic factors” in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

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petitioner that informs EPA’s evaluation regarding how “other economic factors” may cause a small refinery to experience “disproportionate economic hardship” if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

LOC submitted a petition to EPA dated September 15, 2016, for an extension of the RFS small refinery exemption for the LOR for 2016.^{10,11} LOC supplemented this petition on December 30, 2016, with additional refinery financial information and discussion, on January 16, 2017, with additional RFS cost information, and on February 7 and February 16, 2017, with additional financial information. Without an extension of its small refinery exemption, LOC would be required to comply with the RFS program for the year beginning January 1, 2016.

In support of its petition, LOC submitted a completed DOE survey form PI-588, which specified the factors that LOC believes demonstrate disproportionate economic hardship. LOC also provided additional explanation regarding the hardship the refinery would face in complying with the RFS program, and the date ^{(b) (4)} by which it hopes compliance with the requirements can reasonably be achieved at the LOR.¹² LOC also provided financial statements and an estimate of its RFS compliance costs in 2016, absent an extension of the compliance deadline. All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that LOC has submitted all of the information required under 40 CFR 80.1441(e)(2).

III. Background Information

This section summarizes some of the more significant historical and present-day information regarding LOC’s operations, RFS compliance costs and financial condition. LOC provided most of this information to EPA in its petition, supplemental petition supporting documents, and responses to EPA inquiries. EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins for 2013-2015). EPA has not independently verified the accuracy of this information.

A. Summary of LOC’s Operations

LOC is a majority owned subsidiary of Delek US Holdings, Inc. (“Delek”), and operates a single refinery (the LOR) located in El Dorado, Arkansas. The LOR qualified as a small refinery under the RFS1 and RFS2 regulations, ^{(b) (4)}

¹⁰ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year’s RVO.

¹¹ ^{(b) (4)}
LOC did not submit a petition for the 2014 RFS compliance year. ^{(b) (4)}

¹² Petition at 16.

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(b) (4)

obligations,¹³The LOR complied with its 2014 RFS
(b) (4)

The LOR is a moderate complexity refinery (Nelson Index = 10.2) with a maximum crude oil processing capacity of approximately 80,000 bpd.¹⁴ Refinery crude charge averaged (b) (4) barrels per day through June 2016. (b) (4) of the LOR's fuel production was diesel through September 2016.¹⁵

LOC reports that the refinery is configured to run a medium gravity sour crude oil and does not have a coker. It also reports that while the refinery can run lighter crudes, a shift to lighter crude would (b) (4).¹⁶ In addition to local Arkansas sources, the LOR processes Saudi crude and a slate of other foreign and offshore domestic crudes.¹⁷ The refinery produces high quality fuels which include consumer gasoline grades, ultra-low sulfur diesel, and specialty asphalt products.¹⁸ A list of primary processing units and approximate capacities is shown below in Table 1.

Table 1
LOR Process Information¹⁹

Processing Unit	Capacity
Crude distillation unit	80,000 bpd ²⁰
Vacuum distillation unit	45,000 bpd
Naphtha hydrotreater	20,000 bpd
Naphtha reformer	15,300 bpd
Diesel hydrotreater	35,000 bpd
Heavy gas oil hydrotreater	21,000 bpd
Fluid catalytic cracking unit	21,000 bpd
Gasoline desulfurization unit	8,750 bpd
Alkylation unit	5,000 bpd
Solvent de-asphalting unit	7,400 bpd
Hydrogen plant	10 million std cubic ft H ₂ /day

¹³ Email communication from Jung Kim, EPA, to Greg Piotrowski, EPA, October 20, 2016.

¹⁴ Petition at 2. We note information from the U. S. Energy Information Administration Agency (EIA) shows LOC's capacity at 85,000 bpd. U. S. Energy Information Administration Refinery Capacity Report with data as of January 1, 2016.

¹⁵ Petition at 2.

¹⁶ Petition at 2.

¹⁷ LOC website, <http://www.lionoil.com/history>

¹⁸ LOC website, <http://www.lionoil.com/products>

¹⁹ Data obtained from EIA's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

²⁰ Petition at 2. We note this figure differs from the 85,000 bpd provided in EIA's Annual Refinery Capacity Report.

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Sulfur recovery unit	157 short tons/day
Volume of primary liquid fuels products in 2016	(b) (4)
Geographic locations in which fuel will be sold	PADDs 2, 3

LOC maintains its own proprietary marketing network, supplemented with a diverse exchange partner program throughout the mid-continent.²² LOC sells approximately (b) (4) of its gasoline and (b) (4) of its diesel production into the Enterprise pipeline.²³ Because the LOR is the Northernmost refinery on the Enterprise pipeline, it “benefits from a response time and transportation cost advantage over Gulf Coast refineries when supplying fuels to its primary market area of the central Midwest and Mississippi River corridor.”²⁴

LOC has invested over (b) (4) in blending infrastructure for (b) (4) at its (b) (4) the LOR (b) (4)
²⁵ During 2015, LOC began (b) (4)

(b) (4) LOC will blend a (b) (4) fraction of its gasoline production to E10 and diesel to B5, LOC expects to be (b) (4) approximately (b) (4) RINs from its compliance obligation in 2016.²⁶

LOC asserts it is an independent refinery with no upstream operations or other lines of business.²⁷ The terminal at the LOR is owned by Delek Logistics, but the terminal is operated by LOC and LOC (b) (4)²⁸

B. Summary of LOC’s RFS Compliance Costs

LOC provided information on its projected cost of complying with its 2016 RFS obligations, absent an extension of its RFS small refinery exemption. The following table presents an estimate of the LOR’s 2016 RFS compliance costs using data provided by LOC, assuming average production of (b) (4) gasoline and (b) (4) diesel in 2016.²⁹

²¹ From RFS cost summary submitted with petition supplement dated December 30, 2016, Tab B.

²² LOR website, <http://www.lionoil.com/history>

²³ Petition at 11.

²⁴ LOR website, <http://www.lionoil.com/history>

²⁵ Petition at 11.

²⁶ Petition at 11.

²⁷ Petition at 4.

²⁸ Petition at 4, 11, footnote 7.

²⁹ Table 2 uses RIN prices and gasoline production volumes from LOC’s December 30, 2016 supplement, Tab B, which provided an updated estimate of its 2016 RFS compliance costs.

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Table 2
LOC Projected RFS Compliance Costs in 2016^{30,31}

Renewable Fuel Type	2016 Standard ³²	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by LOR	2016 Cost of Renewable Blended by LOR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by LOR	2016 RIN Shortfall/ (Surplus)	Cost of Purchased/ Carried Over RINs	Total Cost of 2016 Purchased/ Sold RINs	Total 2016 RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol equivalent	Ethanol equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.128	(b) (4)								
Biomass-based Diesel	1.590	(b) (4)								
Other advanced Biofuel	0.292	(b) (4)								
Conventional Renewable Fuel	8.090	(b) (4)								
Total Cost					(b) (4)					

LOC purchased RINs in the amount of (b) (4) for compliance with its 2016 RFS obligation through the third quarter of 2016. At the end of the third quarter of 2016 LOC recorded a further RIN obligation in the amount of (b) (4); these amounts are included as (b) (4) in the cost of goods sold in the LOC income statement for 2016. This RIN (b) (4) amount of (b) (4) is included as a (b) (4) on the balance sheet for the nine months ended September 30, 2016, included in the petition supplement on December 30, 2016.³³

MAPCO, a separate company owned by Delek US, operates retail outlets, and (b) (4) of the LOR's gasoline and (b) (4) of its diesel production are sold to this company. The LOR receives RINs for the blending of E10 gasoline and B5 diesel sold to MAPCO. Delek, however, recently sold MAPCO to a non-related party.^{34, 35} Delek Logistics Partners, a public company that Delek has a majority interest in, owns the terminal at the LOR.³⁶

³⁰ EPA is using LOC's estimates of purchased RIN costs, although it notes that LOC's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016. EPA calculated average 2016 RIN prices for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/4/2016 through 12/30/2016. The average costs of RINs in 2016 for corn ethanol, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that LOC may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016.

³¹ EPA notes that D6 RINs were trading between \$0.43-0.44/RIN as recently as February 2, 2017, http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfildaily.pdf

³² EPA notes that LOC calculates these percentages differently from EPA's original compliance cost spreadsheet.

³³ Email communication from Michael Norman, VP – Environmental & Regulatory Affairs, Delek, to EPA, January 16, 2017. We note that this amount of (b) (4) for the nine months ended September 30, 2016, is (b) (4) reflected in Table 2.

³⁴ Petition at 4.

³⁵ "Delek U.S. Completes Mapco Sale to COPEC", available at <http://www.cspdailynews.com/mergers-acquisition-growth/mergers-acquisitions-news/articles/delek-us-completes-mapco-sale-copec>, November 15, 2016.

³⁶ Petition at 4.

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LOC expects to blend approximately (b) (4) of its gasoline (produced internally and purchased) to E10, and (b) (4) of its diesel to B5 during 2016, but still expects to be (b) (4) approximately (b) (4) RINs for 2016 RFS compliance.³⁷

EPA notes that LOC (b) (4), and as of February 7, 2017, LOC had approximately (b) (4) of the RINs it required for compliance with its 2016 RFS obligations.³⁸ LOC states that it has (b) (4)

The LOR' (b) (4)

(b) (4)

LOR (b) (4)

In either instance, LOC states (b) (4)

39

LOC also states that there is (b) (4)

LOC (b) (4)

LOC states that (b) (4)

⁴⁰ LOC

states that it (b) (4)

41

C. LOR's Financial Condition

This section summarizes the significant facts regarding LOR's financial history and current situation, as described by LOC in its petition and supplemental information.

(b) (4), LOC believes the rating would be (b) (4). LOC states the LOR would be rated (b) (4) because the LOR (b) (4) (b) (4) Delek (b) (4).^{42,43}

Table 3 below summarizes balance sheet data for the LOR for the years 2013, 2014,⁴⁴ 2015, and 2016.⁴⁵

³⁷ Petition at 11.

³⁸ Petition supplement dated February 7, 2017, at 3.

³⁹ DOE Form PI-588, Sec. 3.18, submitted with Petition.

⁴⁰ DOE Form PI-588, Sec. 3.18, submitted with Petition.

⁴¹ DOE Form PI-588, Sec. 3.19, submitted with Petition.

⁴² DOE Form PI-588, Sec. 3.15, submitted with Petition.

⁴³ Petition at 3.

⁴⁴

(b) (4)

The petition documents submitted on September 15, 2016, constituted the initial petition for 2016.

(b) (4)

⁴⁵ 2016 Petition supplement dated February 7, 2017, at Tab A.

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Table 3
LOR Balance Sheet Data (in millions)

Date	12/31/13	12/31/14	12/31/15	12/31/16
Cash and cash equivalents	(b) (4)			
Current assets	(b) (4)			
Total assets	(b) (4)			
Current liabilities	(b) (4)			
Non-current liabilities	(b) (4)			
Shareholder's equity	(b) (4)			

Current assets have declined from (b) (4) to (b) (4) over the period December 31, 2013 to December 31, 2016; cash and cash equivalents have declined from (b) (4) to (b) (4) during the same period.⁴⁶ However, total assets have remained essentially the same over this period, from (b) (4) on December 31, 2013 to (b) (4) on December 31, 2016.

LOC maintains a Supply and Offtake Agreement with J. Aron and Company;⁴⁷ the obligation under this Agreement was \$124.6 million at December 31, 2016.⁴⁸ Under that agreement, LOC must pay this stated amount to J. Aron to repurchase the LOR's crude oil inventory that J. Aron has an interest in.⁴⁹ The LOR's debt to equity ratio was (b) (4) as reported in LOC's petition.^{50,51}

Table 4 summarizes refining margin and income data for the LOR for the calendar years 2013 – 2016.^{52,53}

⁴⁶

(b) (4)

Data for 2015 and 2016 is taken from the petition supplement dated

February 7, 2017, Tab A.

⁴⁷ Petition supplement dated December 30, 2016, at 6.

⁴⁸ Petition supplement dated February 7, 2017, Tab A.

⁴⁹ Petition supplement dated December 30, 2016, at 6.

⁵⁰ According to DOE, debt to equity ratio is a key indicator that the financial industry considers in determining whether a company is a good candidate for taking on additional debt - financially sound petroleum refiners typically have a debt to equity ratio of 1.0 or less.

⁵¹ Section 3.10, DOE Form PI-588, submitted with the Petition.

⁵² Gross refining margin is a measure of a refinery's profitability typically and is calculated by summing total product revenue, then subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is typically calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refineries may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

⁵³

(b) (4)

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Table 4
LOR Net Income (Loss) and Refining Margins⁵⁴

Year/Period	2013	2014	2015	2016
LOR gross refining margin, \$ per bbl	(b) (4)			
LOR 2013-2015 average gross refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average gross refining margin, \$ per bbl ⁵⁵			12.32	
National nine-month 2016 average gross refining margin, \$ per bbl ⁵⁶				8.83
LOR net refining margin, \$ per bbl	(b) (4)			
LOR 2013-2015 average net refining margin, \$ per bbl			(b) (4)	
National 2013-2015 average net refining margin, \$ per bbl			7.35	
National nine-month 2016 average net refining margin, \$ per bbl				4.28
LOR operating income (loss), \$ million	(b) (4)			
LOR net income (loss), \$ million	(b) (4)			

Net income for 2016 includes (b) (4) from the (b) (4)

⁵⁷

LOC provided EPA with a statement of cash flows for the year 2016.⁵⁸ (b) (4)

was a (b) (4) increase in accounts payable. A (b) (4) source of cash
payment of (b) (4) in (b) (4) and the (b) (4) (b) (4) included the
(b) (4)
LOC notes that (b) (4)
LOC's (b) (4)

⁵⁹

(b) (4) The Data for the year 2016 are taken from the petition supplement dated February 7, 2017, at 2, and Tab A.

⁵⁴ EPA used the refining margins as provided by LOC in its Form PI-588 and from the petition supplement dated February 7, 2017, at 2. The national average refinery margins for 2013–2015 presented for comparison were provided to EPA by DOE from publically available data.

⁵⁵ Average three-year annual national refinery margins presented for comparison are presented for the periods 2013-2015.

⁵⁶ EPA calculated the nine months ended September 30, 2016 national average refining margins from publically available data. Complete year industry data for 2016 is not yet publically available. EPA also notes that the refining margins are calculated prior to accounting for taxes, depreciation, and finance charges.

⁵⁷ Petition supplement dated February 7, 2017, Tab A, Consolidated Income Statement Analytics.

⁵⁸ Petition supplement dated February 16, 2017, Consolidated Statements of Cash Flows.

⁵⁹ EPA notes that LOC stated in its petition, page 5, that this (b) (4)

However, LOC also stated (b) (4) on page 2 of its petition supplement dated

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LOC states that it (b) (4)

LOC (b) (4)

LOC notes that the (b) (4)

(b) (4)

in 2015.⁶⁰ LOC further notes that during 2016 it (b) (4)

⁶¹

IV. Application of the Criteria for Hardship Relief

EPA may extend the temporary RFS exemption for the LOR if EPA determines that the refinery would experience disproportionate economic hardship in complying with the RFS program. This section provides the analysis and rationale for our granting LOC's petition to extend the small refinery exemption for the LOR.

A. DOE's Evaluation of the LOR

EPA asked DOE to evaluate whether the LOR will experience "disproportionate economic hardship" in complying with its RFS requirements. EPA provided DOE with all of the information described in Section III above. Table 5 summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

Table 5⁶²
DOE Evaluation of LOC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b) (4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b) (4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	(b) (4)
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = D/(G+D) < Industry Avg.	(b) (4)

February 7, 2017, but referred to this (b) (4)
16, 2017, at 1.

in its supplement dated February

⁶⁰ Petition supplement dated December 30, 2016, at 6.

⁶¹ Petition supplement dated February 7, 2017, at 4.

⁶² The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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		5 = $D/(G+D) > \text{Ind. Avg} < 40\%$. 10 = $D/(G+D) > 40\%$	
e	Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)
2 Disproportionate Economic Impact Metrics			
a	Relative refining margin measure ⁶³	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	(b)(4)
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b)(4)
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b)(4)
d	RINs net revenue or cost ⁶⁴	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)			(b)(4)
Ranking (subtotal x 0.50)			(b)(4)
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b)(4)
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b)(4)
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b)(4)
Subtotal (average)			(b)(4)
Ranking (subtotal x 0.50)			(b)(4)

The first ranking in Table 5 (disproportionate impacts) is a combination of the disproportionate structural impact index and disproportionate economic impact index, and the second ranking in Table 5 is the viability index. (b)(4) applied by DOE

LOR (b)(4) applied by DOE

(see DOE's Small Refinery Study

⁶³ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015, based on public data (complete year industry data for 2016 is not yet publically available). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses; it does not include financial expenses such as interest, and depreciation/amortization). The LOR's average gross and net refinery margins over 2013–2015 were (b)(4) and (b)(4), respectively. In scoring this metric, DOE only uses the three-year average refining net margins for the industry and for the LOR.

⁶⁴ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

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for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a “50% waiver” of a small refinery’s RFS requirements if only one of the rankings under Table 5 is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”⁶⁵ (b)(4) applied by DOE

LOR’s (b)(4) applied by DOE

LOR (b)(4) applied by DOE (b) (4)

B. EPA’s Evaluation of LOR’s Hardship Petition

EPA has evaluated all of the information described in Section III., as well as DOE’s analysis of the LOR, to independently determine whether the LOR will experience “disproportionate economic hardship” from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis, including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that the LOR will experience “disproportionate economic hardship” from compliance with the RFS program for the year 2016.

We have considered (b) (4)

. EPA has the responsibility for making the ultimate decision after considering DOE’s evaluation and recommendation, and continues to believe that the proper interpretation of the statutory prerequisite—disproportionate economic hardship—involves “examining the impact of compliance costs on a refinery’s ability to maintain profitability and competitiveness—i.e., viability—in the long term.”⁶⁶

We evaluate viability as an important economic factor for determining “disproportionate economic hardship” similarly to the manner that DOE considers viability in its own methodology. Based on survey data collected from small refineries and publicly available data, DOE found that “[d]isproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations.”⁶⁷ DOE defined “refiner viability” as “the ability of the refiners to remain competitive and profitable.”⁶⁸ We evaluate viability in a similar manner. We consider whether the LOR will remain a

⁶⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

⁶⁶ *Hermes Consol., LLC, dba Wyoming Refining Co. v. EPA*, 787 F.3d 568, 575 (D.C. Cir. 2015).

⁶⁷ DOE Small Refinery Study at 3.

⁶⁸ *Id.* At 27.

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competitive and profitable refinery while satisfying its RFS obligations. EPA notes that it considers profitability not merely in the context of a single year's financial statements, but also in the context of assessing the longer term prospects for the refinery. We also evaluate viability using the metrics considered by DOE in its viability index: (a) compliance costs eliminate efficiency gains (impairment); (b) individual special events; and (c) compliance costs likely to lead to shut down. In reaching our conclusion, we consider all of this information on viability, and additional relevant information as available, to determine whether the LOR faces a "disproportionate economic *hardship*" from compliance, and not merely an economic *impact*. In the present case, we believe that a 100% waiver is consistent with the goal of the statute to provide exemptions in the case of "disproportionate hardship" from compliance with a small refinery's RFS obligations. Here, we find that the LOR's compliance with its 2016 RFS requirements will significantly impact its viability.

The LOR's (b) (4),⁶⁹ which includes RIN costs of (b) (4) in financial performance from 2015. The LOR's total estimated 2016 RFS compliance cost is (b) (4) (see Table 2). The LOR's (b) (4), in contrast to its 2015 (b) (4). EPA notes that the (b) (4) for 2016 would have been (b) (4).

11

The LOR's average annual gross and net refining margins over the years 2013-2015 (b) (4) than industry averages for the three-year period 2013-2015 (\$12.32/bbl gross refining margin and \$7.35/bbl net refining margin). The LOR's net refining margin for 2016 is (b) (4) than the industry average of \$4.28/bbl for the nine months ended September 30, 2016 (see Table 4). The LOR's net refining margin (b) (4) net margins (see Table 4); EPA considers recent average net refining margin performance in its evaluation of disproportionate economic hardship, and notes that the LOR's average 2013-2015 net refining margin was (b) (4) than the industry average for this same period, see Table 4.

The LOR's structural challenges include a refinery optimized for a heavier (medium gravity) crude oil, and it does not have a coker for heavy ends production.⁷² The LOR has (b) (4).

that (b) (4)⁷³ LOC also reports

⁷⁴ LOC further reports that the (b) (4)

⁶⁹ Table 4.

⁷⁰ Email communication from Michael Norman, VP – Environmental & Regulatory Affairs, Delek, to EPA, January 16, 2017.

⁷¹ Petition supplement dated February 7, 2016, at 2 and Tab A Consolidated Income Statement Analytics, 2016.

⁷² Petition at 2.

⁷³ Petition at 2, 4, and 12.

⁷⁴ Petition at 4.

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(b) (4)

⁷⁵ The LOR must (b) (4)⁷⁶ Because

of the LORs' current configuration, it cannot process its (b) (4)

⁷⁷ EPA believes that these structural challenges contribute to LOC's difficulty in satisfying its RFS obligation for 2016 and remaining economically viable, but are not reason enough by themselves to justify an exemption for the LOR from its 2016 RFS obligations.

EPA recognizes that cash flow limitations may hinder the ability of a refinery to purchase RINs for RFS compliance throughout the year as its obligation is incurred, and when the RIN market is perceived to be priced favorably. LOC states that its (b) (4)

from 2015 to 2016.⁷⁸ The LOR's 2015 balance sheet identified a cash and cash equivalents component of its current assets amounting to (b) (4).⁷⁹ EPA notes, however, that the LOR's cash and cash equivalents balance at December 31, 2016, was (b) (4), see Table 3. LOC received a (b) (4)

⁸⁰ (b) (4)

LOC's (b) (4)

⁸¹ LOC also

LOC

notes that Delek will be (b) (4)

(b) (4)

, and that LOC (b) (4)

⁸² LOC further notes that it will have (b) (4)⁸³ Thus, it appears that LOC

may have been (b) (4) accrued.

to satisfy its 2016 RFS obligations as they

In order to show "disproportionate economic hardship," a small refinery needs to show that it faces RFS compliance costs that would "significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure." See DOE Small Refinery Study at 36. EPA believes this is the case for the LOR. The LOR is a small refinery at the upper end of the scale as defined for purposes of the RFS exemption (b) (4) throughput through June, 2016, with a capacity of 80,000 bpd,⁸⁴ but with (b) (4). Refining is a cyclical business, and the LOR has been (b) (4) for several years through 2015. The LOR's net refining margin for the year 2016 is (b) (4) from 2015

⁷⁵ Petition at 12.⁷⁶ Petition at 12.⁷⁷ Petition at 2.⁷⁸ Petition supplement dated December 30, 2016, at 5.⁷⁹ Petition supplement dated December 30, 2016, Tab A.⁸⁰ Petition supplement dated February 7, 2017, Tab A.⁸¹ Petition supplement dated December 30, 2016, at 5.⁸² Petition supplement dated December 30, 2016, at 4.⁸³ Petition supplement dated December 30, 2016, at 4.⁸⁴ Petition at 2.

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and (b) (4) than the nine month 2016 national average presented in Table 4. The LOR's (b) (4). Its estimated 2016 RFS compliance cost is (b) (4), with only (b) (4) of that cost currently reflected in the LOR's 2016 (b) (4). The LOR's cash and cash equivalents at December 31, 2016, (b) (4) approximate the balance on hand at December 31, 2015; this is due in part to the (b) (4)

. Despite this, EPA recognizes that it may be difficult for LOC to fulfill its current 2016 RIN shortfall without a material effect on its financial condition. LOC states that it has approximately (b) (4) of the RINs it requires for compliance with its 2016 RFS obligation.⁸⁵ EPA notes that D6 RINs were trading between \$0.43-0.44/RIN as recently as February 2, 2017.⁸⁶ However, LOC is required to have (b) (4)

.⁸⁷ This fact, coupled with the needs to finance continuing operations may contribute to financial actions by LOC to include (b) (4)

.⁸⁸ Indeed, it appears that the LOR's cash position at December 31, 2016, was such that the LOR would not be able to fully comply with its 2016 RFS obligations without causing a significant impairment of the refinery's operations.

Finally, EPA recognizes that the cost of complying with the RFS program has a varying impact on efficiency gains for different refineries. It is a normal practice in the refining industry for refineries to identify and implement, when possible, projects that improve refinery efficiency, reliability, or safety. The cost of RFS compliance, either through purchasing and blending renewable fuels, or purchasing RINs, or a combination of both, may reduce funds available to pay for other potential projects to improve the efficiency, reliability, and safety of a refinery. However, in order to show "disproportionate hardship," a small refinery needs to show that it faces RFS compliance costs that would "significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure." See DOE Small Refinery Study at 36. As discussed above, after considering the full financial picture of the LOR for the year 2016 and prior years, EPA does find that compliance with its RFS obligations for 2016 would prevent the LOR from being profitable, and threaten the LOR's viability. For example, LOC states that it (b) (4)

(b) (4) .⁸⁹ Examples of the

.^{90,91} It appears that (b) (4)

.⁹² LOC further states "Because of the

⁸⁵ Petition supplement dated February 7, 2017, at 3.

⁸⁶ http://web.archive.org/web/20170203005005/http://progressivefuelslimited.com/web_data/pfldaily.pdf

⁸⁷ Petition supplement dated February 7, 2017, at 3.

⁸⁸ Petition supplement dated February 7, 2017, at 3, 5.

⁸⁹ Petition supplement dated December 30, 2016, at 6.

⁹⁰ Petition supplement dated December 30, 2016, at 2, 6.

⁹¹ Petition supplement dated February 7, 2017, at 4.

⁹² Petition supplement dated December 30, 2016, Tab A, Statements of Cash Flow.

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nature of the holding company structure of the parent, Delek US Holdings, and the placement of the various business operations within subsidiaries, (b) (4)

compliance costs (b) (4) ⁹³ DOE's review concluded that LOC's the LOR's (b) (4)
(see Table 5).

EPA acknowledges LOC's arguments that it (b) (4)

EPA also acknowledges that recent past (b) (4) the LOR, (b)
the LOR (b) (4)

Overall, LOC's situation is one that appears to threaten the viability of the refinery (e.g. threatens the refinery's ability to maintain profitability and competitiveness in the long term), as LOC is financially challenged to meet its 2016 RFS obligation while continuing operations, completing capital spending projects previously deferred, and preparing for a refinery turnaround. Given LOC's situation, we believe that an RFS exemption for the LOR is justified under the statutory requirement of a disproportionate economic hardship.

For all of these reasons, we find that LOC has demonstrated that compliance with its 2016 RFS requirements will result in "disproportionate economic hardship." Based on this evaluation, an extension of the small refinery temporary exemption is warranted.

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with the RFS requirements. Based on our analysis of all of the available information about the LOR, and our consultation with DOE, EPA has concluded that the LOR will experience "disproportionate economic hardship" in complying with the RFS requirements. Therefore, EPA is granting LOC's request for a temporary extension of the LOR's small refinery hardship exemption for 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁹³ Petition at 4.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000296

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. Michael E. Norman
Vice President – Environmental & Regulatory Affairs
Lion Oil Company
1000 McHenry Street
El Dorado, Arkansas 71730

Dear Mr. Norman:

I am writing in response to the petition from Lion Oil Company (“LOC”) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for LOC’s refinery in El Dorado, Arkansas (the “El Dorado Refinery”). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The El Dorado Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause “disproportionate economic hardship.” Pursuant to these provisions, LOC submitted a petition to EPA dated October 24, 2017, to extend the exemption for the El Dorado Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of LOC’s RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the El Dorado Refinery’s gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and LOC is not subject to the requirements of an obligated party for fuel produced at the El Dorado Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grundler", with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Lion Oil Company's
El Dorado, Arkansas Refinery**

**Contains Information Claimed by
Lion Oil Company
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Lion Oil Company (“LOC”) dated October 24, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for the Lion Oil Company’s El Dorado, Arkansas refinery (“LOR”) in 2017. For the reasons described herein, EPA is granting LOC’s request for an extension of LOR’s RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.²

LOR’s (b)(4) applied by DOE

LOR (b)(4) applied by

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE LOR (b)(4) applied by DOE (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE LOR (b)(4) applied by DOE (b)(4) applied by DOE

(b)(4) applied by DOE

LOR (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of LOR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)

³ From DOE recommendation for LOR transmitted to EPA on February 22, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

LOC submitted a petition to EPA on October 24, 2017 for an extension of the RFS small refinery exemption for LOR for 2017. In support of its petition, LOC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that LOC believes demonstrate DEH. The petitioner stated that (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). LOR's average gross and net refinery margins for 2014-2016 were reported by LOC to be (b) (4) and (b) (4), respectively (Petition at 13 and Tab A, Form PI-588, 3.6, 3.7).

⁶ DOE has not scored this category for any hardship petition evaluations.

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(b) (4) LOR (b) (4) .⁷ LOC stated that LOR's (b) (4)
 (b) (4) .⁸ LOC also stated, however, that
 (b) (4) .⁹ LOC reported (b) (4)
 ,¹⁰ (b) (4)

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, LOC's petition presents information demonstrating (b) (4) . LOC's petition also presents financial information that documents (b) (4) (b) (4) . Based on our review of all of the available information about LOR, and our consultation with DOE, EPA has concluded that LOR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting LOC's request for a temporary extension of LOR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE that LOR (b)(4) applied by DOE

EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹¹

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ Petition at 3.

⁸ Petition at 2.

⁹ Petition at 9.

¹⁰ Petition at Tab A, Form PI-588, 3.7.

¹¹ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000302

MAR 23 2018

OFFICE OF
AIR AND RADIATION**(b) (4)**

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for (b) (4) refinery in (b) (4). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated December 22, 2017, to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the (b) (4) (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Grundler", with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Contains Material Claimed as Confidential Business Information

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
(b) (4)**

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated December 22, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) refinery ((b) (4)) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

(b) (4) (b)(4) applied by DOE

(b) (4) (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

Contains Material Claimed as Confidential Business Information

renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

(b)(4) applied by DOE
(b)(4) applied by DOE
(b) (4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of (b) (4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	1
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	1
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg} < 40\%$. 10 = $D/(G+D) > 40\%$	1
e Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	1
2 Disproportionate Economic Impact Metrics		

³ From DOE recommendation for (b) (4) transmitted to EPA on February 27, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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a Relative refining margin measure ⁵		0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	(b)
b Renewable fuel blending (% of production)			
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b)
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market		0 = niche 5 = moderate niche impact 10 = no niche	(b)
d RINs net revenue or cost ⁶		0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)			(b)
Ranking (subtotal x 0.50)			(b)
3 Viability Metrics			
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b)
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b)
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b)
Subtotal (average)			(b)
Ranking (subtotal x 0.50)			(b)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on December 22, 2017, for an extension of the RFS small refinery exemption for (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey Form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4) stated that (b) (4) (b) (4),⁷ but also stated that (b) (4) (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding marketing expenses) for 2014-2016 were (b) (4) and (b) (4), respectively. (Petition at 5, and Tab A, DOE Form PI-588, Secs. 3.6.1, 3.7.1.)

⁶ DOE has not scored this category for any hardship petition evaluations.

⁷ Petition at 1, and Tab B, Compliance Cost Spreadsheet.

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(b) (4) .⁸ While (b) (4) (b) (4)
⁹ , (b) (4) (b) (4)
 stated that (b) (4) (b) (4) ,¹⁰ (b) (4) (b) (4)
 (b) (4) (b) (4)
 11

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4) along with (b)(4) . Based on our review of all of the available information about (b) (4) and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹²

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁸ Petition at 1, 6, 7, and Tab D, sales contract extracts attached to petition.

⁹ DOE Form PI-588, Secs. 3.6.1, 3.7.1, submitted with petition on December 22, 2017.

¹⁰ Petition at 9.

¹¹ Petition at 9.

¹² *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

MAY 04 2017

OFFICE OF
AIR AND RADIATION

Mr. John Krutz
Vice President – Finance, Calumet Specialty Products Partners, L.P.
Calumet Superior, LLC
2407 Stinson Avenue
Superior, Wisconsin 54880

Dear Mr. Krutz:

I am writing in response to the petition from Calumet Superior, LLC (CSC) for a one-year extension of the small refinery exemption from the requirements of the Renewable Fuel Standard (RFS) program for the Calumet Superior Refinery (CSR) in Superior, Wisconsin. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The CSR qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, CSC submitted a petition to the EPA dated December 30, 2016 to extend the exemption for the CSR from January 1, 2016 through December 31, 2016.

Based on our evaluation of all of the information described in Section III of the enclosed Decision Document, and after consultation with the Department of Energy, we have determined that CSC will experience "disproportionate economic hardship" at the CSR by complying with its RFS requirements. See the enclosed Decision Document for a more detailed explanation of our evaluation and determination. Therefore, the EPA is granting CSC's petition for a one-year extension of the CSR's RFS small refinery temporary exemption. This means that from January 1, 2016 through December 31, 2016, CSC's gasoline and diesel production is not subject to the percentage standards of 40 CFR 80.1405, and CSC is not subject to the requirements of an obligated party for fuel produced at the CSR during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Grundler", is written over the word "Sincerely,".

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standards Program
for
Calumet Superior, LLC's
Calumet Superior Refinery**

**Contains Information Claimed by
Calumet Superior, LLC to be
Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Calumet Superior, LLC (“CSC”) dated December 30, 2016, for a one-year extension of the RFS small refinery exemption for the Calumet Superior Refinery (“CSR”), for obligation year 2016. For the reasons described herein, EPA is granting CSC’s request for a one-year extension of the CSR’s small refinery exemption for 2016.

I. Required Information and Criteria for an Extension of the Small Refinery Exemption

A. Background - Overall RFS Program

The federal renewable fuel standard (“RFS”) program is set forth in section 211(o) of the Clean Air Act (“CAA”), 42 U.S.C. 7545(o), as amended by the Energy Policy Act of 2005 (EPAAct), and the Energy Independence and Security Act of 2007 (EISA). The CAA specifies that EPA is to promulgate regulations to ensure that transportation fuel sold or introduced into commerce in the United States, on an average annual basis, contains specified volumes of renewable fuel and three subcategories of renewable fuel - advanced biofuel, cellulosic biofuel, and biomass based diesel. CAA section 211(o)(2)(A)(i). Each year EPA is to use the relevant annual volumes along with an estimate (provided by the Department of Energy) of the amount of gasoline and diesel projected to be sold or introduced into commerce that year, to compute the percentages of total transportation fuel that should qualify as each type of renewable fuel. CAA section 211(o)(3). The relevant annual volumes may come directly from the statute, may be established by EPA for years for which the statute does not specify volumes, or may result from EPA using its statutory authority to adjust statutory volumes. Each of the various refiners and importers who are subject to the RFS standard (“obligated parties”) then apply those percentages to their annual production or import of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible. CAA section 211(o)(3)(B)(ii).

EPA regulations implementing CAA section 211(o) do not require obligated parties to blend renewable fuel into gasoline themselves, but allow them to demonstrate compliance with the RFS by acquiring or generating Renewable Identification Numbers (RINs), which represent renewable fuel that has been produced or imported for use in the United States. 40 CFR 80.1427. An obligated party establishes to the EPA, after each calendar year, that it has accumulated sufficient RINs corresponding to each renewable fuel type to meet its renewable-fuel obligations. Obligated parties need not acquire RINs at the same time that they produce or import fuel but may, if they choose, simply purchase the required number of RINs by the end of the compliance period, once their annual production is known. An obligated party can also carry a surplus or deficit of RINs for one year into the following year. *See generally* 72 FR at 23929-23938.

Both the original RFS statutory provisions enacted pursuant to EPAAct, and the current text of the statute as amended by EISA, specify that small refineries were exempt from the renewable fuel standards until calendar year 2011. CAA section 211(o)(9)(A)(i). In EPA’s original implementing regulations (“RFS1”), EPA defined “small refineries” as

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those with an average crude oil input in 2004 that was no greater than 75,000 barrels/day (bpd). In EPA's regulations implementing the EISA amendments ("RFS2"), EPA amended the definition of small refinery to include those with an average crude oil input no greater than 75,000 bpd crude in 2006. 40 CFR 80.1401. Exempt small refineries were required to notify EPA that they qualified for the exemption by sending verification letters stating their average crude oil input rate during the applicable qualification period. 40 CFR 80.1441(b).

B. Criteria for an RFS Exemption

CAA section 211(o)(9) enabled EPA to extend small refinery exemptions beyond December 31, 2010, through one of two mechanisms. First, if the U.S. Department of Energy (DOE) determined through a study mandated under the CAA that compliance with the RFS requirements would impose "disproportionate economic hardship" on a small refinery, EPA was required to extend the exemption for such refinery by at least two years (2011 and 2012). CAA section 211(o)(9)(A)(ii)(II).

Second, small refineries may, on a case-by-case basis, petition EPA for an extension of their exemption. CAA section 211(o)(9)(B). EPA may approve such petitions if it finds that "disproportionate economic hardship" exists. *Id.* EPA regulations require that a petition for an extension of the small refinery exemption specify the factors that demonstrate a "disproportionate economic hardship," provide a detailed discussion regarding the hardship the refinery would face in meeting the RFS requirements, and identify the date the refiner anticipates that compliance with the RFS requirements can reasonably be achieved at the small refinery. 40 CFR 80.1441(e)(2). EPA, in consultation with DOE, will consider the findings of the DOE Small Refinery Study and other economic factors in evaluating such petitions. CAA section 211(o)(9)(B)(ii). EPA is required to respond within 90 days of receipt of a petition, and has discretion to determine the length of any exemption that may be granted. CAA section 211(o)(9)(B)(i), (iii).

C. DOE Small Refinery Study

DOE conducted its initial study under CAA section 211(o)(9)(A)(ii)(I) and concluded that no small refineries should experience "disproportionate economic hardship" from the RFS program.¹ Congress subsequently directed DOE to re-examine its initial study and determine if its conclusions were still valid. Consequently, DOE issued a revised study in March 2011 containing different conclusions.² The excerpt below from the DOE Small Refinery Study explains the history of and differences between the two DOE studies, and

¹ EPA Act 2005 Section 1501 Small Refineries Exemption Study, Office of Policy and International Affairs, U.S. Department of Energy, January 2009.

² "Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship," Office of Policy and International Affairs, U.S. Department of Energy, March 2011 (DOE Small Refinery Study).

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summarizes DOE's revised approach to evaluating when "disproportionate economic hardship" may exist.³

On February 24, 2009, DOE transmitted its [initial] study [under CAA section 211(o)(9)(A)(ii)] with recommendations to EPA. The study concluded that the market for credits (Renewable Identification Numbers, or RINs) was currently competitive, and found no reason to believe that a competitive market would disproportionately disadvantage participants who purchase credits rather than generating them through blending renewable fuels into their products. Therefore, the study concluded that the exemption for small refineries should not be extended beyond 2010. It was noted that, should market conditions change or if individual small refineries were experiencing economic hardship, small refineries maintained the right under Section 211(o)(9)(B) of the CAA EPCA 2005 to individually petition EPA for an extension of their exemption.

Subsequent events required that the study be revisited. First, the economic downturn reduced the profitability of the refining industry, which has disproportionately impacted some small refiners. Second, the expiration of the biodiesel production credit reduced production and has caused the price of biomass-based diesel RINs to increase. Even though the credit was retroactively restored for 2010, these RINs remain relatively expensive. Finally, in order to capture the unique factors contributing to disproportionate economic hardship, additional consultation with individual refiners was necessary.

On a parallel track to the changed market conditions, Congress directed DOE to revisit the issue of disproportionate economic hardship for small refineries and report its findings.⁴ This study addresses the concerns of Congress in directing DOE to:

- Seek comments from owners of small refineries on the reasons why they may believe that they would experience disproportionate economic hardship if the small refinery exemption were not extended.
- Assess RFS compliance impacts on small refinery utilization rates and profitability.
- Evaluate the financial ability of individual small refineries to meet RFS requirements.
- Estimate small refinery impacts by region.

³ Excerpt from pp. 1-3 of the DOE Small Refinery Study. A complete explanation of DOE's hardship evaluation process and their conclusions are available in a redacted version of the DOE Small Refinery Study at, <http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/small-refinery-exempt-study.pdf>.

⁴ The Senate Report (Senate Report 111- 45) accompanying the FY2010 Energy and Water Development Appropriations Bill included language directing DOE to re-open the study and revisit the issue in greater detail completing the revised study by June 30, 2010. The Appropriations Bill directed DOE to collect data on small refineries and quantify the economic impact of RFS compliance. In addition, the Appropriations Conference Report (House Report 111-278) included language supporting the Senate Appropriations Report request.

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- Reassess whether small refinery compliance costs through the purchase of RINs is similar to the cost of compliance by purchasing and blending renewable fuels.
- Estimate the economic impact of RFS on small refineries on a regional basis.

Given this Congressional direction, this study needed to consider the unique factors contributing to disproportionate economic hardship for individual small refineries in the study. Consequently, a survey of small refineries was necessary, something not included in the previous DOE study.

In order to evaluate disproportionate economic hardship caused by the impact of compliance with the RFS on small refineries, these compliance strategies had to be characterized and their varying impact on refineries investigated. There is a direct cost associated with participation in the program. The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who over-comply to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.

The absolute cost of compliance is one of the key factors in determining disproportionate economic hardship from compliance with RFS2. There are two major pathways that may be followed for compliance. One compliance pathway is blending renewable fuels with gasoline, which may require capital expenditures for equipment. The second pathway is purchasing and maintaining a portfolio of RINs. If certain small refineries must purchase RINs that are far more expensive than those that may be generated through blending, this will lead to disproportionate economic hardship for those effected entities. Economic theory suggests that the price of RINs would reflect the marginal cost of compliance with the RFS, that is, the most expensive cost of blending renewable fuels. The average cost of compliance may be much lower than the marginal cost. If the economics of blending ethanol are favorable, that is, ethanol is less expensive than the gasoline components it replaces, the compliance cost may be essentially zero for refiners that fulfill their obligation through blending renewable fuels. Such refiners would have blended even without the mandate. While current RIN prices for ethanol are moderate (adding less than 2 cents per gallon of renewable fuel), there are numerous circumstances when RIN prices could rise, increasing the cost of compliance and perhaps increasing the cost of compliance more for refineries that rely on RINs for compliance compared to those that do not. These circumstances include both increases in the costs of renewable fuels and the

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inability to blend all of the mandated renewable fuel into conventional transportation fuels (the so-called blend wall). [⁵]

Small refineries could have particular obstacles that would make compliance more costly than those of large integrated companies. Compliance costs and characteristics of small refineries that make them more vulnerable to financial distress may be unique to each small refinery. Since much of the information is not publicly available, the small refineries were surveyed to make a determination of disproportionate economic hardship. This information was supplemented by publicly available data, which also yielded the baseline from which disproportionate economic impact may be discerned. Given the unique nature of each refinery, it is not possible to make a recommendation on any refinery that did not submit a survey.

Disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average, and an effect sufficient to cause a significant impairment of the refinery operations. The individual metrics for each refinery were grouped into two general categories: eight metrics representing disproportionate impacts on the refinery and three metrics representing the effect of compliance on the viability of the firm.

To gather necessary information for its revised study, DOE developed a survey form for distribution to an EPA-provided list of small refineries which had RFS temporary exemptions under the terms of the statute through December 31, 2010. DOE spent a significant amount of time and effort developing the survey methodology, including discussions with potential survey participants, and discussions and consultations with EPA. The DOE survey form PI-588 was also made available for public review and comment through publication in a Federal Register notice on July 15, 2010. 75 Fed. Reg. 41165 (July 15, 2010). Three companies submitted comments to DOE and DOE modified the proposed survey form to address the comments.

DOE developed a methodology for evaluating the survey data that is described in the DOE Small Refinery Study. In sum, DOE developed a scoring matrix to evaluate “disproportionate economic hardship” at small refineries. The matrix was comprised of two major sections: one section combining the scoring for disproportionate structural and economic weightings, and a separate section regarding the impact of compliance with the RFS program on the viability of the firm. Eight equally-weighted individual disproportionate structural and economic metrics were assigned a score of 0, 5 or 10 and

⁵ EPA notes that after further review, contrary to statements in this paragraph from the DOE Study, it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased since the DOE study, because the RIN prices lead to higher sales prices obtained for the refineries’ blend stock, resulting in no net cost of compliance for the refinery. *See* Dallas Burkholder, “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,” US EPA Office of Transportation and Air Quality (May 14, 2015), available at www.regulations.gov docket number EPA-HQ-OAR-2015-011100062.

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were then averaged to derive a disproportionate impacts index between 0 and 10. The disproportionate impacts index was then scaled from 0 to 5 (by dividing the average score by 2), with 5 indicating conditions most likely to lead to “disproportionate economic hardship.” Similarly, the three equally-weighted metrics were assigned a score of 0 or 10 for the viability index and were then averaged and scaled from 0 to 5 (by dividing the average score by 2). Disproportionate economic hardship was found if both indices were greater than 1. This requires, for example, a score of 10 for at least two of the eight metrics for the disproportionate structural and economic impact metrics index, and a score of 10 for at least one of the three metrics for the viability metrics index.

DOE sent survey questionnaires to 59 small refineries, and received valid responses from 18 refineries. Of the 18 respondents to its survey request, DOE determined that 13 small refineries scored a 1 or higher in both indices, thus concluding that these small refineries would experience “disproportionate economic hardship” from compliance with the RFS requirements.⁶

In May 2014, DOE issued an Addendum to the DOE Small Refinery Study.⁷ The DOE Addendum explains how DOE revised its scoring for the metrics in the viability index to better reflect the changed circumstances for small refineries:

For the 2011 DOE exemption study, the economic recession and the relative recent implementation of the RFS2 regulations resulted in a number of individual small refineries receiving individual viability metric scores of 10, and scores greater than one for the viability index as a whole. However, circumstances have changed since the 2011 study was completed. Generally, there is an improved business climate for refineries that is associated with the country’s economic recovery. In addition, refiners have now had many years since the initiation of the RFS program in 2007 to develop business practices to meet RFS obligations.⁸ In assisting EPA in evaluating petitions for small refinery RFS exemptions for 2013, DOE has found that some small refineries should be scored an intermediate level of 5 for metric 3a. This intermediate score acknowledges an impact of RFS compliance costs on efficiency gains, but at a level lower than would justify a score of 10. DOE also has concluded that an intermediate score of 5 may be appropriate for viability metric 3b in certain circumstances. Both of these viability metrics address impacts that may occur across a continuum, and providing for the

⁶ After DOE completed their study, they discovered a misplaced small refinery survey that was not included in the study. DOE determined that this small refinery also qualified for a 2-year extension of their RFS exemption.

⁷ “Addendum to the Small Refinery Exemption Study, An Investigation into Disproportionate Economic Hardship,” Office of Energy Policy and Systems Analysis, U.S. Department of Energy, May 2014 (DOE Addendum).

⁸ As the market for renewable fuels matures, obligated parties have developed a much wider suite of physical and contractual arrangements to meet their RFS mandates. In general, small refineries with an RFS exemption have a competitive advantage over the others. This advantage can be enhanced in situations where an exempt party separates some attached RINs through blending renewable fuels, and sells those RINs to improve profitability. A firm’s competitive advantage during an exemption period, and any profits from RIN sales during an exemption period, could lead to lower scores in subsequent evaluations of disproportionate economic impact.

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possibility of an intermediate score allows DOE to more accurately assess an individual refinery's economic situation. This is unlike [for] viability metric 3c which involves essentially a binary determination – whether or not RFS compliance costs would likely lead to a facility shut-down. For viability metric 3c, therefore, DOE continues to believe that it is appropriate to limit scores to either a 0 or 10.

The result of allowing intermediate scoring for viability metrics 3a and 3b is that a facility with only a moderate score of 5 in a single viability metric will not have a total viability index score indicating disproportionate economic hardship. On the other hand, a moderate score under both metrics 3a and 3b will be sufficient to generate a viability score indicating the existence of disproportionate economic hardship.⁹ DOE has determined that it is appropriate that a moderate score in two viability metrics would result in a total viability index score greater than 1. This reflects the real-world situation where different factors may combine to produce disproportionate economic hardship. In this regard, however, DOE notes that these are two distinct metrics: where DOE determines an intermediate score of 5 under metric 3b on the basis of an individual special event, that same event will not necessarily lead to an intermediate or higher score for viability metric 3a (“RFS compliance costs eliminates efficiency gains”).

D. EPA Evaluation of Small Refinery Petitions

In evaluating a petition for the extension of an RFS small refinery exemption, EPA determines whether the petitioner's compliance with its RFS obligations would impose a disproportionate economic hardship. CAA section 211(o)(9)(B)(i). EPA, in consultation with DOE, considers the findings of the DOE Small Refinery Study (including the DOE Addendum) and other economic factors. CAA section 211(o)(9)(B)(ii). Accordingly, as part of EPA's process for evaluating RFS small refinery hardship petitions, EPA asks DOE to evaluate all of the information EPA receives from each petitioner. DOE has expertise in evaluating economic conditions at U.S. refineries, which it used in developing an assessment process for identifying when “disproportionate economic hardship” exists in the context of the RFS program.

EPA considers DOE's assessment of whether a small refinery will face disproportionate impact in complying with its RFS obligations. The DOE analysis informs EPA's finding of whether “disproportionate economic hardship” exists and in turn EPA's resulting decision about whether to grant or deny a petition for an extension of the RFS temporary exemption for a small refinery.¹⁰ In addition to the metrics DOE applies in assessing

⁹ The facility must also score a 1 or higher in the structural and economic weightings index.

¹⁰ EPA also considers DOE's analysis of a small refinery's viability, which DOE assesses as the second component of “disproportionate economic hardship.” DOE Small Refinery Study at 3. (“Disproportionate economic hardship must encompass two broad components...and an effect sufficient to cause a significant impairment of the refinery operations.”) DOE Small Refinery Study at 27, 36 (Refiner viability refers to the ability of the refiners to remain competitive and profitable.”). In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on “viability,” but we are changing our approach. While a showing of a significant impairment of refinery

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disproportionate economic hardship, EPA considers information petitioners submit that documents or explains relevant economic conditions or business decisions. EPA may also consider other publicly available information regarding the petitioner. These may inform EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience "disproportionate economic hardship" if required to comply with its RFS obligations.

II. Compliance with Petition Requirements

CSC submitted a petition to EPA dated December 30, 2016, for an extension of the RFS small refinery exemption for the CSR for 2016.^{11 12} CSC further submitted petition supplements on January 12 and 26, February 27, and March 1, 3, 17 and 18, 2017. Without an extension of its small refinery exemption, CSC would be required to comply with the RFS program beginning January 1, 2016.

In support of its petition, CSC submitted financial statements, RFS compliance cost information, and discussion of CSC's financial and hardship situation. CSC submitted a completed DOE survey form PI-588, which specified the factors that CSC believes demonstrate disproportionate economic hardship.¹³ CSC also described the hardship the refinery would face in complying with the RFS program. CSC further stated that (b) (4)

However, (b) (4)

¹⁴ CSC also provided financial statements for 2016,^{15,16} and estimates of its RFS compliance costs in 2016,¹⁷ absent an extension of the compliance deadline. CSC made EPA aware of recent Calumet (b) (4)

CSC,¹⁸ and responded to EPA questions concerning (b) (4)

¹⁹ All of this information was forwarded to DOE for consideration in its analysis.

EPA finds that CSC has submitted all of the information required under 40 CFR 80.1441(e)(2).

operations may help establish disproportionate economic hardship, compliance with RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations — even if the refinery's operations are not significantly impaired.

¹¹ The renewable volume obligations for 2014, 2015, and 2016 were established in a single rule which was signed by the EPA Administrator on November 30, 2015. The rule establishes a series of compliance deadlines for obligated parties to demonstrate compliance for each successive year's RVO.

¹² CSC did not petition for an exemption from RFS compliance for CSR for 2011 through 2015, Petition dated December 30, 2016, at 1, footnote 1.

¹³ Petition dated December 30, 2016, at Tab A.

¹⁴ Petition supplement dated January 12, 2017, email from John Krutz, Calumet, to Greg Piotrowski, EPA.

¹⁵ Petition supplement dated March 1, 2017, CSR balance sheet as of December 31, 2016.

¹⁶ Petition supplement dated March 3, 2017, CSR income statement and CSR refinery margins for 2016.

¹⁷ Petition dated December 30, 2016, at Tab B.

¹⁸ Petition supplement dated February 27, 2017, at 1, 2.

¹⁹ Email from Bruce Fleming, Calumet, to Byron Bunker, EPA, dated March 18, 2017.

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III. Background Information

This section summarizes some of the more significant historical and present-day information regarding the CSR's operations, RFS compliance costs and financial condition. CSC provided most of this information to EPA in its petition and in other supporting documents (*e.g.*, CSC financial information). EPA obtained the remaining information from public sources and from DOE (*e.g.*, average refining industry margins). EPA has not independently verified the accuracy of this information.

A. Summary of the CSR's Operations

CSC, a wholly owned subsidiary of Calumet Specialty Products Partners, L.P. (Calumet), operates a refinery in Superior, Wisconsin (CSR).²⁰ Calumet is a limited partnership formed under the laws of the state of Delaware.²¹ It purchased the CSR (formerly Murphy Oil Corporation refinery) on September 30, 2011.²² CSC did not petition for RFS small refinery hardship relief for the CSR until compliance year 2016.²³

CSC states that CSR "(b) (4)

throughput capacity of approximately 38,000 barrels per calendar day (BPCD); crude throughput through the third quarter of 2016 was (b) (4).²⁴ The refinery has a crude oil throughput capacity of approximately 38,000 barrels per calendar day (BPCD); crude throughput through the third quarter of 2016 was (b) (4).²⁵ The CSR is a (b) (4)

CSR (b) (4)

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The refinery primary process units consist of crude distillation, fluid catalytic cracking, alkylation, hydrotreating (naphtha, kerosene, diesel, and fluid catalytically-cracked gasoline), and naphtha catalytic reforming.²⁷ The CSR produces gasoline, kerosene, diesel, heavy fuel oil, and asphalt.²⁸ A list of primary processing units and approximate production rates is shown below in Table 1.

²⁰ Petition dated December 30, 2016, at 2.

²¹ Petition dated December 30, 2016, at 2.

²² PR Newswire Release, October 3, 2011, available at <http://www.prnewswire.com/news-releases/calumet-specialty-products-partners-lp-completes-acquisition-of-superior-wisconsin-refinery-assets-from-murphy-oil-corporation-130961828.html>

²³ Petition dated December 30, 2016, at 1, footnote 1.

²⁴ Petition dated December 30, 2016, at 5.

²⁵ Petition dated December 30, 2016, at 2-3.

²⁶ Petition dated December 30, 2016, at 2-3.

²⁷ Petition dated December 30, 2016, at 3.

²⁸ Petition dated December 30, 2016, at 3.

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Table 1
CSR Process Information²⁹

Processing Unit	Capacity ³⁰
Atmospheric crude distillation unit	50,000 bpd
Vacuum distillation unit	20,500 bpd
Catalytic cracking unit	11,000 bpd
Alkylation unit	1,600 bpd
Gasoline hydrotreater	7,500 bpd
Diesel hydrotreater	6,500 bpd
Kerosene and jet fuel hydrotreater	7,700 bpd
Naphtha reformer	11,000 bpd
Sulfur recovery unit	34 tons sulfur/day
Asphalt and heavy oil production unit	7,900 bpd
Estimated volume of primary liquid fuels products for the 12 months of 2016	(b) (4)
Geographic locations in which fuel will be sold	Primarily PADD 2

In addition to the production capacities listed above, the refinery has approximately 3.2 million barrels of storage capacity in over 80 storage tanks, as well as loading and unloading facilities and utilities.³² The CSR's (b) (4)

The Enbridge Pipeline delivers crude oil to the CSR.³⁵

CSC (b) (4)

CSC (b) (4)

³⁴ CSC (b) (4)

³⁵

²⁹ Data obtained from DOE's Annual Refinery Capacity Report published June 22, 2016, which contains data as of January 1, 2016.

³⁰ Capacity in barrels per stream day.

³¹ Petition dated December 30, 2016, at Tab B.

³² Profile: Calumet Specialty Products Partners, at <http://www.reuters.com/finance/stocks/companyProfile?symbol=CLMT.O>.

³³ Profile: Calumet Specialty Products Partners, at <http://www.reuters.com/finance/stocks/companyProfile?symbol=CLMT.O>.

³⁴ Petition dated December 30, 2016, at 6.

³⁵ Petition dated December 30, 2016, at Tab B.

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CSC states that it (b) (4)

³⁶ CSC estimated (b) (4)

31

B. Summary of CSC's RFS Compliance Costs

CSC provided information on its projected cost of complying with its 2016 RFS obligation, absent an extension of its RFS small refinery exemption. The following table contains an estimate of the CSR's RFS compliance costs for 2016 provided by CSC.³⁸ The cost of purchased RINs in Table 2 below reflects market costs on December 6, 2016. This date was chosen by CSC because it (b) (4)

39,40,41

Table 2
CSR Projected RFS Compliance Costs for 2016⁴²

Renewable Fuel Type	2016 Standard	2016 Renewable Volume Obligation	2016 Renewable Volume Blended by CSR	2016 Cost of Renewable Blended by CSR	2016 Total Cost/ (Benefit) of Blended Renewable	2016 Total RINs Separated by CSR	2016 RIN Shortfall/ (Surplus)	2016 Cost of Purchased/ Carried Over RINs	2016 Total Cost of Purchased/ Sold RINs	2016 Total RFS Cost
Renewable	%	Gallons	Gallons	\$/Gallon	\$	Ethanol equivalent	Ethanol equivalent	\$/RIN	\$	\$
Cellulosic Biofuel	0.1280	(b) (4)								
Biomass-based Diesel	1.5900	(b) (4)								
Advanced Biofuel	2.0100	(b) (4)								
Renewable Fuel	10.1000				(b) (4)					
Total Cost					(b) (4)					

³⁶ Petition dated December 30, 2016, at 1.

³⁷ Petition dated December 30, 2016, at Tab B.

³⁸ Table 2 uses RIN prices from CSC's petition dated December 30, 2016, at Tab B.

³⁹ Email from John Krutz, Calumet, to Greg Piotrowski, EPA, dated January 12, 2017.

⁴⁰ EPA notes that CSC's estimated costs for purchased RINs are significantly higher than the average RIN prices in 2016. EPA calculated average 2016 RIN prices for total renewable fuel, biomass-based diesel, cellulosic biofuel, and advanced biofuel from OPIS' mean RIN prices published from 1/1/2016 through 12/30/2016. The average costs of RINs in 2016 for total renewable fuel, biomass-based diesel, cellulosic biofuel, and advanced biofuel were \$0.82, \$0.91, \$1.89, and \$0.90, respectively. Given these average figures, it appears that CSC may have been able to reduce its RFS compliance costs by purchasing its RINs on a systematic, ratable basis over the course of 2016.

⁴¹ EPA notes that D6 RINs were trading at \$0.38/RIN as recently as March 2, 2017,

http://www.progressivefuelslimited.com/web_data/PFL_RIN_Recap.pdf

⁴² Table 2 is an RFS compliance cost estimate for the twelve months of 2016. This projection uses gasoline and diesel production levels of (b) (4), respectively, petition dated December 30, 2016, Tab B.

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Because of the CSR's (b) (4)

CSC (b) (4)
CSC

further states that (b) (4)
CSC (b) (4)

⁴³

CSC states that (b) (4)

The state of

Minnesota requires transportation diesel blending, but CSC's (b) (4)

“(b) (4)
of CSC's (b) (4)

CSC further states that
.” Additionally, several
⁴⁴

CSC states that it “(b) (4)

.”⁴⁵ CSC further states, however, that (b) (4)

CSR (b) (4)
CSC (b) (4)

⁴⁶

CSC recognized RINs expense of approximately (b) (4)

for 2016.⁴⁷

C. CSR's Financial Condition

This section summarizes the significant facts related to the CSR's financial history and current situation, as described by CSC in its petition and supplemental information.

Table 3 below summarizes data from the CSR's 2014 and 2015 balance sheets submitted with the petition on December 30, 2016.⁴⁸ The 2013 balance sheet information was submitted as a supplement to the petition on January 26, 2017.⁴⁹ The balance sheet data for December 31, 2016, was submitted as a petition supplement on March 1, 2017.⁵⁰

⁴³ Petition dated December 30, 2016, at 6.

⁴⁴ Petition dated December 30, 2016, at 7.

⁴⁵ Petition dated December 30, 2016, at 16.

⁴⁶ Petition dated December 30, 2016, at 11.

⁴⁷ Petition supplement dated March 3, 2017, income statement for 2016.

⁴⁸ Petition dated December 30, 2016, at Tab D.

⁴⁹ Petition supplement dated January 26, 2017.

⁵⁰ Petition supplement dated March 1, 2017.

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Table 3
CSR Balance Sheet Data (in millions)

Date	12/31/13	12/31/14	12/31/15	12/31/16
Current assets	(b) (4)			
Current liabilities	(b) (4)			
Long-term liabilities	(b) (4)			
Partner's capital	(b) (4)			

CS (b) (4)

SC (b) (4)

Calumet and CSC (b) (4)
51

CSC (b) (4)

(b) (4)

Calumet's (b) (4)

(b) (4)

CSR, Calumet
52 Calumet's
Calumet

(b) (4)

CSR(b) (4)

53 CSC believes that

(b) (4)

(b) (4)

54

Table 4 presents CSR's refining margins and income, and compares CSR's refining margins with industry averages.⁵⁵

⁵¹ Petition dated December 30, 2016, at 4.

⁵² Calumet's (b) (4)

⁵³ Petition dated December 30, 2016, at 4.

⁵⁴ Petition dated December 30, 2016, at 3.

⁵⁵ Gross refining margin is a measure of a refinery's profitability, and is typically calculated by summing total product revenue, subtracting the total cost of raw material (primarily crude oil), and dividing by total product volume. Net refining margin is calculated by also subtracting operating expenses such as purchased fuel and electricity, labor and routine maintenance, although different refineries may include different expenses in their net margin calculations. Margins are typically calculated prior to accounting for taxes, depreciation and finance charges.

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Table 4
CSR Net Income (Loss)⁵⁶ and Refining Margins⁵⁷

Year	2013	2014	2015	2016
CSR gross refining margin, \$ per bbl	(b) (4)			
CSR 2014-2016 average gross refining margin, \$ per bbl				(b) (4)
National 2014-2016 average gross refining margin, \$ per bbl				11.40
CSR net refining margin, \$ per bbl	(b) (4)			
CSR 2014-2016 average net refining margin, \$ per bbl				(b) (4)
National 2014-2016 average net refining margin, \$ per bbl				6.52
CSR operating income (loss), \$ million	(b) (4)			
CSR net income (loss), \$ million	(b) (4)			

On March 17, 2017, CSC submitted supplemental petition information which included (b) (4) (b) (4)

⁵⁸ (b) (4)

Calumet, and CSC states that (b) (4)

⁵⁹ We note that this (b) (4)

ou

CSC (b) (4) Calumet was rated Caa1 by Moody's Investor Service (speculative and high credit risk) and B- by Standard and Poor's Financial Services LLC (highly speculative).⁶¹ On October 18, 2016, Calumet's Standard and Poor's rating outlook was changed from B- Stable to B- Negative.⁶² CSC stated that

⁵⁶ The CSR's operating and net income for 2014 and 2015 were taken from income statements included with the Petition dated December 30, 2016, at Tab C. The CSR's operating and net income for 2013 were provided by CSC as supplemental information on January 12, 2017. The CSR's operating and net income for 2016 were provided by CSC as supplemental information on March 3, 2017.

⁵⁷ The CSR refining margins for years 2014 and 2015 were provided by CSC in its Petition dated December 30, 2016, at Tab C. The CSR refinery margins for 2013 were provided as supplemental information on January 12, 2017. The CSR refining margin data for 2016 was provided as supplemental information by CSC on March 3, 2017. The national average refinery margins presented for comparison were provided to EPA by DOE from publically available data.

⁵⁸ Petition supplement dated March 17, 2017, at 2 and Tab B.

⁵⁹ Petition supplement dated March 17, 2017, at 2.

⁶⁰ Petition supplement dated March 17, 2017, at Tab B.

⁶¹ Petition dated December 30, 2016, at 3.

⁶² Petition dated December 30, 2016, at 3.

(b) (4)
63

CSC did not provide EPA with a statement of cash flows for 2016; CSC did provide EPA with a free cash flow analysis for the CSR for 2016.⁶⁴

CSC's petition states:

(b) (4)

CSC's petition also states that:

(b) (4)

The petition further states that:

(b) (4)

IV. Application of the Criteria for Hardship Relief

EPA may extend the temporary RFS exemption for the CSR if EPA determines that the refinery would experience disproportionate economic hardship in complying with the RFS program. This section provides the analysis and rationale for our granting CSC's petition to extend the small refinery exemption for the CSR.

A. DOE's Evaluation of the CSR

EPA asked DOE to evaluate whether the CSR will experience "disproportionate economic hardship" in complying with its RFS requirements. EPA provided DOE all of

⁶³ Petition dated December 30, 2016, at 3.

⁶⁴ Petition supplement dated March 17, 2017, at Tab B.

⁶⁵ Petition dated December 30, 2016, at 1.








⁶⁶ Petition dated December 30, 2016, at 3.

⁶⁷ Petition dated December 30, 2016, at 16.

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the information described in Section III above. Table 5 below summarizes the results of DOE's evaluation. A detailed description of DOE's methodology is provided in the DOE Small Refinery Study.

Table 5⁶⁸
DOE Evaluation of CSC's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	
e Subject to exceptional state regulations	0 = Not subject, 5 = Some barriers for compliance 10 = Subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ^{69, 70}	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10 = Negative	
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	

⁶⁸ The gray-shaded categories were developed as part of the DOE small refinery study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

⁶⁹ DOE calculates three-year average industry refining gross and net margins for 2013, 2014, and 2015 based on public data (complete year industry data for 2016 was not publically available at the time of DOE's analysis). The three-year average industry gross and net margins for these years were \$12.32/bbl and \$7.35/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest and depreciation/amortization). The CSR's three-year average gross and net margins for 2013-2015 were (b) (4), respectively. In scoring this metric, DOE only uses the three-year average net refining margins for the industry and for the CSR.

⁷⁰ (b)(4) applied by DOE. CSR (b)(4) applied by DOE. On March 3, 2017 CSC provided a refining net margin for 2016 to EPA, and this information was communicated to DOE. (b)(4) applied by DOE. See Email from Barry Schaps, Stillwater Associates, to Greg Piotrowski and Janet Cohen, EPA, dated March 6, 2017.

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iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d	RINs net revenue or cost ⁷¹	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		
	Ranking (subtotal x 0.50)		
3	Viability Metrics		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	
	Subtotal (average)		
	Ranking (subtotal x 0.50)		

The first ranking in Table 5 (disproportionate impacts) is a combination of the disproportionate structural index and disproportionate economic impact index, and the second ranking in Table 5 is the viability index. (b)(4) applied by DOE

CSR (b)(4) applied by DOE

(see DOE's Small Refinery Study for more detailed explanation).

DOE has not changed its basic methodology for evaluating small refinery RFS hardship petitions, but it now recommends a "50% waiver" of a small refinery's RFS requirements if either of the rankings in the scoring matrix is equal to or greater than 1. This is due to language included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act instructing DOE as follows: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."⁷² (b)(4) applied by DOE CSR's (b)(4) applied by DOE

CSR's (b)(4) applied by DOE

B. EPA's Evaluation of CSC's Hardship Petition

EPA has evaluated the information described in Section III., as well as DOE's analysis of CSC, to determine whether CSC will experience "disproportionate economic hardship"

⁷¹ DOE has not scored this category for any hardship petition evaluations due to the lack of consistency among participants in DOE's small refinery survey in 2010. See further discussion on this issue below.

⁷² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

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from compliance with its RFS requirements. In the discussion that follows, EPA independently reviews the information as we consider other economic factors in our analysis including, but not limited to, profitability, net income, cash flow and cash balances, gross and net refining margins, ability to pay for small refinery improvement projects, corporate structure, debt and other financial obligations, RIN prices, and the cost of compliance through RIN purchases. After considering all of this information, EPA finds that CSC will experience “disproportionate economic hardship” and that exemption from its RFS obligations is warranted for 2016.

In determining whether CSC will experience disproportionate economic hardship, EPA considers whether compliance with its RFS obligations disproportionately impacts CSC. EPA generally defers to DOE’s assessment due to DOE’s expertise on the refining industry. In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact (b)(4) applied by DOE CSC (b)(4) applied by DOE

These disproportionate impacts disadvantage the refinery relative to the industry average and make compliance with RFS obligations relatively more burdensome. EPA finds that this disproportionate difficulty of compliance indicates that compliance with its RFS obligations would cause CSC disproportionate economic hardship.

For a disproportionately-impacted refinery like CSC, its disproportionate economic hardship may be exacerbated by a difficult year for the industry as a whole. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend, coupled with its disproportionate economic and structural impacts, can result in tangible effects on the small refinery, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire RINs for compliance, and the potential to impair refinery operations. In addition, structurally impacted refineries often lack access to capital or credit that can also be necessary to achieve compliance.

CSC’s (b) (4) further shows that it would suffer disproportionate economic hardship from compliance with its RFS obligations. CSC submitted supplemental petition information regarding (b) (4) by Calumet and (b) (4) CSR, (b) (4)

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⁷³ Table 2, Footnote 47, Table 4, and Footnotes 58, 59, and 60. CSC’s net income of (b) (4)

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For the reasons discussed above, EPA finds that CSC would suffer a disproportionate economic hardship if it had to comply with its RFS obligations for 2016 and should be granted full relief.⁷⁴

V. Conclusion

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption based on a demonstration by the small refinery of a "disproportionate economic hardship" from compliance with the RFS requirements. Based on our analysis of all of the available information about CSC, and our consultation with DOE, EPA has concluded that CSC will experience "disproportionate economic hardship" in complying with its 2016 RFS requirements. Therefore, EPA is granting CSC's request for a temporary extension of its RFS hardship exemption through December 31, 2016.

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the appropriate circuit. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷⁴ EPA acknowledges that (b)(4) applied by DOE CSC (b)(4) applied by DOE (b)(4) applied by DOE. While a showing of a significant impairment of refinery operations may help establish disproportionate economic hardship (see footnote 10), EPA may choose to grant full relief based on its own independent review of the small refinery's information.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
WASHINGTON, D.C. 20460

2020-02-18-000329

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Ms. LeAnn Johnson Koch
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Subject: 2017 Renewable Fuel Standard Small Refinery Hardship Petition
Superior Refining Company, LLC
2407 Stinson Avenue
Superior, Wisconsin 54880

Dear Ms. Johnson Koch:

I am writing in response to the petition from Superior Refining Company, LLC ("SRC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for SRC's refinery in Superior, Wisconsin (the "Superior Refinery"). Consistent with the limited waiver of confidential business information relating to this hardship petition provided by SRC, EPA is sending this decision and accompanying decision document to you, Mr. John Krutz at Calumet Specialty Products Partners, LP, and Mr. Daniel Syphard at Husky Energy.

As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Superior Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, the immediate predecessor to SRC, Calumet Superior, LLC, submitted a petition to EPA dated August 9, 2017, to extend the exemption for the Superior Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of SRC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Superior Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and SRC is not subject to the requirements of an obligated party for fuel produced at the Superior Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Grundler', with a long horizontal flourish extending to the right.

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

cc: Mr. John Krutz
Vice President, Finance
Calumet Specialty Products Partners, LP
2780 Waterfront Pkwy E Dr
Indianapolis, Indiana 46214

Mr. Daniel Syphard
Legal Counsel, U.S. Operations
Husky Energy
5500 Blazer Pkwy., Suite 200
Dublin, Ohio 43017

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For
Superior Refining Company, LLC's
Superior, Wisconsin Refinery**

**Contains Information Claimed by
Superior Refining Company, LLC
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from Calumet Superior, LLC dated August 9, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption in 2017 for the Calumet Superior Refinery located in Superior, Wisconsin. Calumet Superior, LLC was purchased and renamed Superior Refining Company, LLC (SRC) on November 8, 2017. The refinery corporate entity is hereafter referred to as SRC. SRC assumed responsibility for the Superior, Wisconsin refinery's (SWR) RFS small refinery hardship petition for 2017 as a term of the sale.¹ For the reasons described herein, EPA is granting SRC's request for an extension of SWR's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."² Congress then directed EPA to follow DOE's recommendation.³ (b)(4) applied by DOE (b)(4) applied by DOE

SWR (b)(4) applied by DOE

SWR's (b)(4) applied by DOE

¹ Email from Dan Syphard, Husky Energy, Inc., to Greg Piotrowski, EPA, February 7, 2018.

² Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

³ Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

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For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE SWR (b)(4) applied by DOE (b)(4) applied by DOE EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE SWR (b)(4) applied by DOE (b)(4) applied by DOE SWR (b)(4) applied by DOE (b)(4) applied by DOE












Table 1⁵
DOE Evaluation of SWR's Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4) applied by DOE
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4) applied by DOE
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4) applied by DOE
i E10	0 = High acceptance, 5 = Low acceptance 10 = No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$	(b)(4) applied by DOE

⁴ From DOE recommendation for SWR transmitted to EPA on February 27, 2018.

⁵ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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$10 = D / (G + D) > 40\%$		
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	
2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁶	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	
d RINs net revenue or cost ⁷	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		
Ranking (subtotal x 0.50)		
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	
Subtotal (average)		
Ranking (subtotal x 0.50)		

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

⁶ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were B4 and B4 respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization).

⁷ DOE has not scored this category for any hardship petition evaluations.

Contains Material Claimed as Confidential Business Information

SRC submitted a petition to EPA on August 9, 2017, for an extension of the RFS small refinery exemption for SWR for 2017. In support of its petition, SRC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that SRC believes demonstrate DEH. SRC stated that B4 ; SRC further noted that B4 .⁸ SRC expected

⁹ SRC stated

B4

B4

¹⁰

SRC further stated that

B4

¹¹

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, SRC's petition presents financial information that (b)(4) along with (b)(4)

. Based on our review of all of the available information about SWR, and our consultation with DOE, EPA has concluded that SWR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting SRC's request for a temporary extension of SWR's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE SWR (b)(4) applied by DOE

, EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹²

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁸ Petition at 2.

⁹ Petition at 8.

¹⁰ Petition at 7.

¹¹ Petition at 7.

¹² *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000336

MAR 23 2018

OFFICE OF
AIR AND RADIATION

(b) (4)

Dear (b) (4)

I am writing in response to the petition from (b) (4) for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for (b) (4)

(b) (4) As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The (b) (4) qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, (b) (4) submitted a petition to EPA dated July 12, 2017 to extend the exemption for the (b) (4) for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of (b) (4) RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the (b) (4) gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and (b) (4) is not subject to the requirements of an obligated party for fuel produced at the (b) (4) (b) (4) during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

**Grant of Request for Extension of
Small Refinery Temporary Exemption
Under the Renewable Fuel Standard Program
For**

(b) (4)

**Contains Information Claimed by
(b) (4)
To be Confidential Business Information**

Office of Transportation and Air Quality

Contains Material Claimed as Confidential Business Information

EPA received a petition from (b) (4) dated July 12, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for (b) (4) in 2017. For the reasons described herein, EPA is granting (b) (4) request for an extension of (b) (4) RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of “disproportionate economic hardship” (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and “other economic factors” in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator’s discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as “disproportionate impacts” for purposes of DOE’s scoring metrics, and also described as “structural” factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as “viability” for purposes of DOE’s scoring metrics, and also described as “economic” factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies’ threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: “If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner.”¹ Congress then directed EPA to follow DOE’s recommendation.² (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

(b) (4) (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that face disproportionate impacts, resulting in tangible effects including diminished refining

¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: <https://rules.house.gov/bill/114/hr-2029-sa>.

² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 (“When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE’s recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”).

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margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that (b)(4)

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE (b)(4) applied by DOE

Therefore (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

Table 1⁴
DOE Evaluation of (b) (4) Petition

1 Disproportionate Structural Impact Metrics		Score
a Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	(b)(4)
b Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	(b)(4)
c Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	(b)(4)
i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	
ii E85	Not scored because of small E85 volumes	
iii Biodiesel	Not available	
d Percentage of diesel production	0 = $D/(G+D) < \text{Industry Avg.}$ 5 = $D/(G+D) > \text{Ind. Avg.} < 40\%$ 10 = $D/(G+D) > 40\%$	(b)(4)
e Subject to exceptional state regulations	0 = not subject, 5 = Some barriers for compliance 10 = subject to exceptional state regulations	(b)(4)

³ From DOE recommendation for (b) (4) transmitted to EPA on February 27, 2018.

⁴ The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

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2 Disproportionate Economic Impact Metrics		
a Relative refining margin measure ⁵	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10 = Negative	(b) (4)
b Renewable fuel blending (% of production)		
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	(b) (4)
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	(b) (4)
d RINs net revenue or cost ⁶	0 = revenue > cost, 10 = revenue < cost	
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)
3 Viability Metrics		
a Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	(b) (4)
b Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	(b) (4)
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	(b) (4)
Subtotal (average)		(b) (4)
Ranking (subtotal x 0.50)		(b) (4)

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

(b) (4) submitted a petition to EPA on July 12, 2017 for an extension of the RFS small refinery exemption for (b) (4) for 2017. In support of its petition, (b) (4) submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that (b) (4) believes demonstrate DEH. (b) (4) stated that (b) (4)

⁵ DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). (b) (4) average gross margin and net margin (excluding financial expenses) for 2014-2016 were (b) (4) and (b) (4), respectively. (Petition at 8, and at Tab A, DOE Form PI-588, Secs. 3.6,7.)

⁶ DOE has not scored this category for any hardship petition evaluations.

Contains Material Claimed as Confidential Business Information

(b) (4)⁷ (b) (4) (b) (4). ⁸ (b) (4) stated

that (b) (4)

⁹

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, (b) (4) petition presents financial information that documents (b) (4)

along with other metrics of (b)(4)

. Based on our review of all of the available information about (b) (4) , and our consultation with DOE, EPA has concluded that (b) (4) will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2017. Therefore, EPA is granting (b) (4) request for a temporary extension of (b) (4) small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with (b)(4) applied by DOE (b) (4) (b)(4) applied by DOE

, EPA has decided to grant 100 percent relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.¹⁰

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

⁷ Petition at 3, 6.

⁸ Petition at 8, and at Tab D, DOE Form PI-588, Secs. 3.6, 7.

⁹ Petition at 11.

¹⁰ *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000342

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. John R. Walter
Executive Vice President and General Counsel
Wynnewood Refining Company, LLC
P.O. Box 305
906 South Powell Street
Wynnewood, Oklahoma 73098

Dear Mr. Walter:

I am writing in response to the petition from Wynnewood Refining Company, LLC ("WRC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for WRC's refinery in Wynnewood, Oklahoma (the "Wynnewood Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Wynnewood Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, WRC submitted a petition to EPA dated January 23, 2018, to extend the exemption for the Wynnewood Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of WRC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Wynnewood Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and WRC is not subject to the requirements of an obligated party for fuel produced at the Wynnewood Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

2020-02-18-000343

MAR 22 2018

OFFICE OF
AIR AND RADIATION

Mr. Joseph Israel
Chief Executive Officer
Hermes Consolidated, LLC, dba Wyoming Refining Company
740 W. Main Street
Newcastle, Wyoming 82701

Dear Mr. Israel:

I am writing in response to the petition from Hermes Consolidated, LLC, doing business as Wyoming Refining Company (hereinafter "WRC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for WRC's refinery in Newcastle, Wyoming (the "Newcastle Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Newcastle Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, WRC submitted a petition to EPA dated December 29, 2017, to extend the exemption for the Newcastle Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of WRC's RFS small refinery temporary exemption. This means that from January 1, 2017, through December 31, 2017, the Newcastle Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and WRC is not subject to the requirements of an obligated party for fuel produced at the Newcastle Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document